

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

**GUIDANCE AND WORKBOOK
FOR MENTAL HEALTH OFFICERS**

PACK 3

Forward

The Adults with Incapacity (Scotland) Act 2000 will be fully implemented by 2003. This will improve the way in which welfare, financial and medical decisions are taken on behalf of adults who cannot act on their own behalf.

I am pleased that the Social Work Services Inspectorate, through the production of these training workbooks, is able to respond to a request from the Association of Directors of Social Work for focussed and in-depth material.

There are a number of packs, each designed to address the different levels of knowledge and skills that different interests will require. There is also a trainers' guide to assist those who intend to run related courses.

I am grateful to all those who helped us to complete this work. Particular thanks goes to the Advisory Group who assisted in developing the product. Thanks must also go to the staff team at Robert Gordon University. Mike Lowit's contribution is especially appreciated.

A handwritten signature in black ink, appearing to read 'Angus Stammers', written in a cursive style with a horizontal line underneath.

Chief Social Work Inspector
May 2002

CONTENTS

1.	Introduction	1
	Who the pack is for	1
	How should the pack be used	1
	Knowledge audit	2
	What the pack is about?	2
2.	The MHO's role in the Act	3
3.	Review of pack 2	4
4.	Welfare in the Act	6
	Risk, property, financial affairs and welfare	9
5.	Part 6 of the Act: intervention orders and guardianship orders	9
	Guardianship assessment	10
	Transfer of orders from the 1984 Act to the 2000 Act	12
	Variation, recall and termination of guardianship	13
6.	Continuing and welfare powers of attorney	14
7.	Accounts and funds	15
8.	Medical treatment and research	16
9.	Exercises	18-37
	Annex 1 – Resource/reading list	38
	Annex 2 – Adults with Incapacity (Scotland) Act 2000	47
	Annex 3 – Advisory group membership	48
	Annex 4 – Glossary of terms	49
	Annex 5 – Blank Forms for reports to accompany intervention and guardianship applications	52
	Annex 6 – Letter from SWSI re transitional arrangements for Mental Health guardianship	91

NB All words in bold are terms which are explained in the glossary

1. Introduction

Who the pack is for

1.1 The pack assumes reasonable understanding of the legislative background to MHO practice and a working familiarity with terms like curator bonis and **power of attorney**. It also assumes a basic understanding of the concept of consent to treatment as it relates to the Mental Health (Scotland) Act 1984. It should be read by MHOs in conjunction with training Pack 2, for assessment and care management staff.

How the pack should be used

1.2 There is a trainers' guide to this pack which discusses its scope. It is intended that it is flexible in its application.

1.3 You can use this as distance learning material, through which you may work alone, at your own pace. While this option has the advantage of maximum flexibility and may fit the needs of a small minority of workers in more isolated settings, what you may lose by this approach is the quality of discussion and shared experiences of colleagues. It also requires a degree of self-discipline that more structured group approaches do not.

1.4 You can use this pack in an open learning approach where you read sections of the text alone within pre-agreed timescales and meet with a group of colleagues to work through the exercises relating to the text. This option has the advantage of flexibility while retaining the benefit of shared learning.

1.5 The preferred option is for you to use this pack as part of a structured training event, facilitated by a trainer who provides a venue and timetable in which the group reads and discusses the text and works through the exercises. This process could be achieved in two rather full days of training or spread over shorter periods. This will be the preferred option in a number of authorities.

1.6 Finally, the pack is also designed for use in MHO training programmes. If a programme finds merit in using the pack, the programme providers should decide how best to fit the material into their course.

Knowledge audit

1.7 Pack 2 is designed to give essential knowledge of the 2000 Act for practising MHOs. It is by no means a comprehensive guide to practice under the Act and, no matter how broad your experience as an MHO, you should read all of the pack but work with the Act in conjunction with the relevant Codes of Practice. Since the Act places new statutory duties on local authorities and MHOs there is nothing that may be routinely dispensed with.

1.8 For newly qualified MHOs or candidates on MHO programmes, the background reference to previous legislation (**Guardianship orders** under the 1984 Act, curator bonis or tutor dative for example) will have little meaning. This reference is given to help more experienced practitioners to understand how the previous legislative framework is transferred into that of the 2000 Act. As such, if you have never had cause to learn about these outdated arrangements, it would make little sense to research them now. However, you should bear in mind the significant number of orders that will transfer from the 1984 Act into **guardianship** under the 2000 Act.

What the pack is about

1.9 The pack introduces aspects of the Adults with Incapacity (Scotland) Act 2000 specific to MHOs, in the context of foregoing legislation and practice. As such, it must be read in conjunction with Pack 2, for Assessment and Care Management Staff:

- It discusses the specific relevance to MHOs of the principles as the guiding focus for all activity under the Act;
- It discusses the specific relevance to MHOs of the definitions of incapacity as they relate to assessments and reports for intervention under the Act;
- It shows the relevance to MHOs of the duties and roles of:
 1. The sheriff;
 2. The Public Guardian;
 3. The Mental Welfare Commission, and
 4. The local authority.

- It addresses the powers of the Act in relation to MHO practice:
 1. **Continuing and welfare powers of attorney;**
 2. **Intromission with funds;**
 3. Medical treatment and research; and
 4. **Intervention orders and guardianship orders;** and
- It focuses on the role of the MHO in regard to all of the above and it focuses upon the MHO as a crucial player in implementing the Act. It also emphasises the autonomous role of the MHO in undertaking assessments as a key factor in this process.

2. The MHO's role in the Act

2.1 In addition to the general roles of the social work officer, outlined in Pack 2, many of which may fall to MHOs as expert practitioners in the field of mental disorder, this pack identifies further roles exclusive to MHOs. These are:

- Section 26 (1) (c) – An MHO is a member of a prescribed class and may countersign applications to withdraw funds from the adult's bank account;
- Part 5 - Although the Act covers issues of consent to medical treatment, it does not alter the MHO role in consent to and application for detention under the 1984 Act;
- Section 53 – the MHO is specifically charged with the preparation of reports to accompany applications for **intervention orders** in many circumstances; and
- Section 57 – the MHO has the same role in report writing for application for **guardianship orders**.

2.2 The core message is that the MHO role in making assessments for **guardianship** and **intervention order** applications is a key one. It is to be considered as an independent assessment - independent from care management assessments and, in the proposed model of best practice, independent from the role of applicant for **guardianship** and **intervention orders**. The MHO assessment is conveyed in the statutory report that accompanies an application.

2.3 While there is a distinction which should be made between the role of the MHO in the Act and the function of care managers in local authorities, the Act brings the role of MHO more squarely into the arena of community care than it has ever been. This is because the wider scope of powers afforded under the Act, the more precise grounds or tests of incapacity and the core principles of the Act all work in a dynamic manner to offer opportunity to meet the community care needs of adults with incapacity in creative ways that have not previously been possible.

2.4 In this context, the MHO role also has to be seen in the broader context of the range of duties and powers given to the local authority under the Act, and the relationship that the local authority will have to forge with the Office of the Public Guardian, the Mental Welfare Commission, the sheriff and the range of private citizens authorised with powers as proxies under the various provisions of the Act.

3. Review of pack 2

3.1 Please note that, even though you will have read Pack 2 by now, you should read this summary because it begins to introduce the greater detailed knowledge required of MHOs in carrying out their duties under the Act.

3.2 In the introduction to the text, Pack 2 drew attention to a culture in which informal solutions were often used as a means to overcome the problem of some adults' inability to consent to necessary actions or decisions. The new Act imposes a challenge to transcend the culture in which action was taken based on assumptions of what was considered to be in an individual's best interests, without always considering what the person and their carers might have wished and whether legal intervention would have best protected the interests of the adult. The new Act gives legal means to resolve a wide range of problems on behalf of a broad group of people who face difficulties in regard to their decision making capacities. The practice among professionals which has evolved over the years must now be examined and challenged in light of the new legislation.

3.3 Workable legislation is now in place to respond to the needs of people who wish to make their own arrangements for the management of their property, finances and personal welfare in the event that they lose capacity to arrange these matters themselves. It is also there to be used by families and professionals where arrangements had not been made by the adult but are now needed. To proceed informally where the law

exists to address the circumstances described above, may leave individuals and their authorities open to legal challenge later.

3.4 Pack 2 emphasised the importance of the consideration of the principles of the Act as essential in every use of the legislation. It related this not only to a general discussion of the principles but to each specific application of the Act. It also related this to Section 82 which limits the liability of those taking action under the Act provided their actions were reasonable, in good faith and in accordance with the principles.

3.5 The pack related the principles to the definition of incapacity found in Section 1 (6) and the specific tests for incapacity that preface most of the Act's powers. It proposed a dynamic between the principles and these tests that accommodates the notion of partial capacity and the fact that capacity under the Act is now considered in the context of the task in hand - a fundamental departure from previous legislation.

3.6 It outlined the powers of the sheriff, the Public Guardian, the Mental Welfare Commission and the local authority. It also addressed **powers of attorney, intromission** with an adult's funds, management of residents' funds, consent to medical treatment, and **intervention and guardianship orders**, as they relate to the role of the social work officer. In respect of the latter orders, discussion focused on the role of the MHO as report writer in applications relating to welfare powers where incapacity is caused by mental disorder and the Chief Social Work Officer where it is caused by physical disability. This discussion addressed the need to see the role of applicant to the sheriff as separate from the MHO/Chief Social Work Officers' roles as report writers.

3.7 Three possible ways of viewing these roles were introduced:

- That the MHO/Chief Social Work Officer ought never to be the applicant;
- That resources in at least some local authorities would not allow MHO/Chief Social Work Officer to maintain separate roles from the applicant and that while not ideal, the law allows for MHOs to be both the applicant and the report writer; and

- That MHOs are well used to maintaining a separation of conflicting roles. They have been able to be both applicant and take on an independent assessment/report writing role in applications for Section 18 and **guardianship** under the 1984 Act. Therefore, MHOs should always be the applicant and report writer.

3.8 As discussed in Pack 2, local authorities might use MHOs routinely as applicants and possibly to take on the role of effective **guardian** for the local authority. These are issues for individual authorities to address. As it still remains for local authorities to clarify these issues, much of the discussion of the process of making applications is located in the Pack for assessment and care management staff. However your authority determines the issue, the Act requires a screening process for incapacity and this will introduce a broader role for non-MHO practitioners in the legislation.

3.9 While Pack 2 does discuss the tests for incapacity in relation to the separation of personal welfare uses from those relating to property and financial affairs, the discussion of the meaning of welfare in pack 2 is restricted. There follows a more detailed discussion for MHOs.

4. Welfare in the Act

4.1 The following is a more detailed discussion of the concept of welfare than is given in Pack 2. To supplement it you may find the various examples that illustrate the Codes of Practice for local authorities and **attorneys** of help. In particular, the examples in the section of the local authority code relating to 'assessing the adult's needs' and the section on **welfare attorneys** in the **Attorney's** Code are of relevance here and in the following discussion of risk.

4.2 There is a need to explain the difference between the definition of welfare as MHOs know it from **guardianship** under the 1984 Act and the meaning it has in the context of the 2000 Act. **Guardianship** under the 1984 Act was criticised for being too narrow and prescriptive and being too broad a definition of welfare. While the 2000 Act does not seek to define personal welfare, it relates it to a very wide range of powers. This is reflected in the broader scope of the meaning of 'welfare' which includes medical care and treatment and medical research affecting the adult.

4.3 The Act splits the authority to intervene in two spheres ie material possessions (property and financial affairs) on one hand and personal welfare on the other.

4.4 It may help to consider welfare in the context of the range of needs to which we are all subject. Maslow's basic model may assist in this process. He proposed a hierarchy of motivation in which people are motivated by the necessity of meeting needs, which Maslow structured into a hierarchy. The levels of this hierarchy are:

- Physiological needs (the necessities of food, water and air, without which we would die);
- Safety needs (amongst which Maslow proposed shelter and money - because access to money guarantees your ability to meet your physiological needs long term);
- Love and belongingness (in relation to nurturance and psychological well-being); esteem needs (in relation to self-worth and a sense of purpose) and lastly, self-actualisation (the sense that one aspect of human activity is that it is an end in itself, an expression of one's existence). (Abraham Maslow 1948).

4.5 Maslow's model shows us firstly that the material needs in terms of property and money are not as easily separated out from welfare needs as the Act suggests. Insofar as welfare includes physical well-being, money is needed to secure the basics of food and water, let alone esteem.

4.6 In the limited discussion of welfare in Pack 2, it was referred to in relation to abuse and exploitation. It also has to be seen in the context of neglect both by others and by the adult themselves. However, if Maslow informs this discussion, abuse, exploitation and neglect do not merely relate to the risk posed to physical well-being, they also relate to the levels of love and belongingness, esteem and self-actualisation. This may be seen if the link between these needs and good mental health is considered. To deprive a person of esteem for example, is to jeopardise their mental health.

4.7 For some, self-actualisation may seem to be an abstract concept to consider in relation to the concept of welfare as it might be examined in Court. However, it has a clear link to the principles of the Act. If self-actualisation is about doing things as an end in themselves and about

maximising one's potential as a human being, it has a link to the principle in which the adult should be encouraged to exercise such skills as they have. Risk to welfare extends to any environment in which this opportunity is denied. It should be noted that while self-actualisation is the tip of Maslow's hierarchy, in his model a person denied access to opportunity to meet their needs in this regard would become challenged at lower levels of the hierarchy. All needs are inter-related and so, to be denied opportunity for self-actualisation is to be challenged, for example, in respect of self esteem and belonging.

4.8 If the meaning of welfare is not clearly articulated in the Act, its potential definition lies in the scope of needs (other than those relating to property and financial affairs) that the Act sets out to address. Personal welfare is a potentially open-ended concept in the sense that it can be linked to any decision or action required in respect of these non-material aspects of life.

4.9 To understand this, attention must be paid to the test for **intervention orders**, that:

'The adult is incapable of taking the action, or is incapable in relation to the decision about his property, financial affairs or personal welfare to which the application relates, make an order' (Section 53 (1)),

and the test for **guardianship orders**, that the:

'Adult is incapable in relation to decisions about, or of acting to safeguard or promote his interests in, his property, financial affairs or personal welfare, and is likely to continue to be so incapable' (Section 58 (1) (a)).

4.10 In applications for **guardianship and intervention orders**, the welfare interests of an adult are defined by the powers requested in the order. The definitions of welfare in relation to any given application are very specific and will be determined by the aspects of the application that the sheriff accepts should be included in the order. For example, if a sheriff agrees that it is in the welfare interests of an adult to live in a sheltered housing project, and to get physiotherapy on an ongoing basis, then these things become part of the definition of welfare.

4.11 In considering the concept of welfare, MHOs should not be too prescriptive, as the Act allows for creative solutions to adults' problems.

On the other hand, they should be aware of the need to justify those matters to be included under the umbrella of welfare and relate them not only to the relevant test for incapacity but also to the principles.

Risk, property, financial affairs and welfare

4.12 If the purpose of an application is to resolve issues of risk to the adult's interests in property, financial affairs and personal welfare, the success of an application in Court will be determined broadly speaking by the medical evidence of the existence of incapacity and the MHO's evidence of the existence of risk and necessity. The powers requested for the authority to intervene must specifically relate to risks they seek to redress.

4.13 In the Mental Welfare Commission's investigation into the Case of Mrs K¹, one of their recommendations was that, in reference to applications, 'when risks are being assessed, careful attention must be paid to the evidence for any risk being considered. There should be written records of significant incidents and responses made to them. In reaching decisions about statutory intervention, case conferences must formally take account of the risks that have been identified, noting the evidence referred to above; different ways of managing each risk should be considered and records made of the decisions.'

4.14 This puts the discussion of risk-benefit analysis in Pack 2 into sharp focus. Risk must not only be considered in terms of actual evidence, in relation to material interests and personal welfare but it must be reviewed in relation to how the proposed use of powers sought would be of benefit to the adult (Section 1 (1)). Benefit in turn must be viewed in regard to the past and present wishes and feelings of the adult, the views of the nearest relative and primary carer and of any proxy (Section 1 (4)).

Do Exercise 1 now

5. Part 6 of the Act: Intervention orders and guardianship orders

5.1 As the above discussion of risk, welfare and the principles has already taken us into the realm of applications, Part 6 will now be discussed in advance of the remaining considerations for MHOs in Parts 2, 3 and 5 of the Act. Part 6 of the Act deals with those sections which

¹ The Inquiry into the care of Mrs K, aged 90, The Mental Welfare Commission, November 2001.

most centrally involve MHOs in their specific role ie **intervention** and **guardianship orders**.

Guardianship assessment

5.2 Throughout Pack 2 for assessment and care management staff, there were allusions to the specialist role of the MHO in assessment and the relationship of that role to over-arching community care assessments. It suggested that this assessment, for the purposes of the report required under Section 53 (4), for **intervention orders** and Section 57 (3) (b), for **guardianship orders**, could be considered as a process with 3 levels.

5.3 The first level of assessment is that which brought the MHO to the task. It is envisaged that this would most often be an assessment of need carried out by assessment and care management staff. Staff acting in this capacity are in a pivotal position to screen for problems associated with impaired capacity. Any sort of assessment by another practitioner however, may trigger the referral to an MHO in relation to action under the Act.

5.4 This leads to the complication discussed in Pack 2, that, while the MHO's role as a specialist practitioner with specific tasks under the Act is distinct from that of assessment and care management staff, these roles may or may not be embodied in one and the same person for the purposes of the Act. In that discussion, the position in law was noted, whereby the Act states both in Section 53 (3) and Section 57 (2), that the local authority has a duty to make an application where one is necessary and no-one else has or will make one, and that where the incapacity is a result of mental disorder and the application is in respect of the adult's welfare the MHO is required to write the report. As the local authority's duty may be delegated to anyone who is reasonably competent to perform it and the MHO role is not subject to such delegation, this poses a choice for local authorities as to how they deploy the workforce. The alternatives are:

1. That MHOs always maintain a separate role by restricting themselves to report writing and not making applications;
2. That MHOs may make applications as well as writing the reports sometimes; or,

3. That MHOs, as experts in the process, always apply and write the reports.

5.5 MHOs should be able to maintain an independence between the two functions, for example, in the case where your professional judgement causes you to be ambivalent about certain aspects of an application which your authority requires you to make. MHOs are acquainted with this position from the duty to make Section 18 applications under the 1984 Act even where they may disagree with the application.

5.6 Whether you become both applicant and report writer or maintain a distinct role as report writer, it is important to think of MHO assessments in the context of a community care (or other professional) assessment and it is important to see the distinctions in the roles.

5.7 MHOs will write reports accompanying applications made by non-local authority applicants (relatives, carers, etc), as well. In such cases the basic assessment of needs will still have to be made, if it has not yet been done. The MHO is brought to the assessment process at the point where there is a question about the possible existence of incapacity which is affecting the proposed implementation of a care plan the adult is assessed as requiring. MHOs, however, are involved routinely in comprehensive community care assessments and may be well placed to undertake this in relation to referrals for a report where an adult had not been referred for a community care assessment previously. In such cases the report would focus on aspects of need which cannot be addressed without using the Act to secure authority to implement specific parts of the proposed care plan, due to the adult's impaired capacity in these matters.

5.8 It needs to be acknowledged that a community care assessment often relates to property and finances only in regard to the assessment of means in relation to charging policies for the care provided. **Financial intervention** and **guardianship orders** have a potential to authorise powers in relation to finance and property. These are not matters which are addressed currently in community care assessments and reviews. Close attention will have to be paid to securing appropriate input into the assessment and care planning which informs the **financial intervention** and **guardianship order** application process as this is new territory for local authorities - territory with which they are required by statute to become familiar.

Do Exercise 2 now

Transfer of orders from the 1984 Act to the 2000 Act

5.9 The transfer of powers under the Act is discussed in Pack 2. As it is more likely to affect MHOs than their non-MHO colleagues, a further exercise and discussion is offered here.

5.10 It is very important not to consider as simply a bureaucratic exercise the transfer of the powers from the 1984 Act to the 2000 Act. As of 1 April 2002, all 1984 Act **guardianship** cases were transferred to 2000 Act **welfare guardianship** with the 3 powers of access, attendance and residence granted under the 1984 Act. This process is automatic and the **guardianship** transferral lasts for as long as it had been approved or renewed prior to 1 April 2002. Once transferred, best practice would be to consider whether the powers continue to be necessary or whether they should be adjusted to meet the current needs of the patient. This implies the need to assess the adult. This would be in keeping with the principles of the Act. Once transferred to **guardianship** under the 2000 Act, renewals will have to be by way of a new application under the 2000 Act procedures where it will be essential to tailor the powers sought to those areas in which the adult lacks the capacity to make decisions or take actions to safeguard their personal welfare. Consideration will have to be given as well to how long a period you will be seeking to have the **guardianship** approved. While this would normally be for 3 years, it could be for any period which fits the circumstances, provided you can convince the sheriff that what you are requesting is in keeping with the principles of the Act. The sheriff can grant the **guardianship** for any length of time they see fit. The sheriff can also make an interim order while, for instance, ordering further interviews and reports. The sheriff also could treat the application as if it were an application for an **intervention order**.

5.11 Further to the transfer of **guardianship**, under Section 88 and Schedule 4, on implementation of Part 6 of the Act all powers of tutor dative became **guardianship orders** carrying the powers as given by the courts under tutor dative. All powers of tutor-at-law became **guardianship orders** with powers to manage property, financial affairs and personal welfare of the adult. Local authorities will have been notified in all such cases as they have a duty under the 2000 Act to supervise **welfare guardians**. Implicit in this duty to supervise is the need to establish whether the tutor who became a **welfare guardian**

under the transitional arrangements is a suitable person to act in this capacity. Local authorities will need to be clear with **guardians**, even when felt to be suitable, exactly what their expectations of them will be in terms of record keeping, meetings and visits to the adult.

Do Exercise 3 now

Variation, recall and termination of guardianship

5.12 The sheriff has authority to vary the powers within an order. This means that, on application by any person, including the adult themselves, the sheriff may add to or remove powers contained in the order in accordance with the principles of the Act and any change in the adult's circumstances/needs.

5.13 The sheriff may also, on application, replace a **guardian** who is not suitable for appointment.

5.14 The sheriff has powers to recall **guardianship orders** relating to financial affairs, property and/or personal welfare, in the circumstances set out below.

5.15 If, at any point during the course of an order, the adult ceases to conform to the definition of incapacity contained in Section 58 (1) (a) and (b), the powers of the order should be recalled. Equally, should an order no longer promote or safeguard the adult's interests in their property, financial affairs or personal welfare, even though the adult remains affected by incapacity, the **guardianship** should be recalled.

5.16 The Act (Section 70) anticipates that there will be times when the decision of a **guardian** with powers relating to the personal welfare of the adult will not be complied with by the adult or by other persons. In such situations the **guardian** can apply to the sheriff to make an order requiring the adult or any other person to implement the decision of the **guardian**. Where the non-compliance relates to a decision of the **guardian** as to the place of residence of the adult, the sheriff can grant a warrant authorising a constable to enter any premises where the adult is, or is reasonably supposed to be, and to apprehend and to remove the adult to the place designated by the **guardian**.

5.17 Section 70 addresses a commonly cited problem under 1984 Act **guardianship**, i.e. that the powers granted were unenforceable. In saying this, however, the use of Section 70 will have to be approached with a great deal of thought and sensitivity. All appropriate alternatives to use of Section 70 which utilise the professional skills of the multi-disciplinary team and the relationships they may have formed with the adult should always be explored first. When such alternatives are unsuccessfully exhausted, the potential costs to the adult's welfare and relationship with those working with the adult must be weighed against the benefits to the adult's welfare before making an application under Section 70.

5.18 In reference to orders relating to financial affairs and property, the Public Guardian has a duty to recall orders in such circumstances, provided they are satisfied from their own investigations, or by application from any other person, that this is the case. (Section 73 (1))

5.19 The Mental Welfare Commission (where the incapacity is a consequence of mental disorder) or the local authority have the same powers of recall in respect of orders regarding the adult's personal welfare. (Section 73 (3)). The only exception here is that the local authority cannot recall **guardianship** when they themselves are acting as **guardian**. In such cases an application for recall should be made to the Mental Welfare Commission. Where it is anticipated that the recall might be contested by any party with an interest, the application should be made to the Sheriff Court.

5.20 An order is terminated by the death of the adult.

6. Continuing and welfare powers of attorney

6.1 Part 2 of the Act introduces the creation of **continuing** (Section 15) and **welfare** (Section 16) **powers of attorney**. Both these powers are discussed in general in Pack 2. **Powers of attorney**, however, are of specific relevance to MHO practice under the 2000 Act and, as of April 2001, under the 1984 Act (in relation to consent to and application for detention).

6.2 The 2000 Act gives a potential role for **welfare attorneys** and **guardians**, corresponding to the role (in the 1984 Act) that 'a relative' has in consenting to Section 24 and 'the nearest relative' has in all other functions (e.g. consent to Sections 26 and 26A; application for and right to contest Section 18; application for the discharge of the patient and

related appeals; and the right to receive notification of detention). These powers, however, must be specified in the relevant order. **Welfare attorneys** and **guardians** do not become added to the list of relatives at Section 53 of the 1984 Act. They become alternatives to the relatives' function. For example, at Section 24 of the 1984 Act it will now read 'An Emergency Recommendation shall not be made unless, where practicable, the consent of a relative, or any **guardian** or **welfare attorney** who has powers to consent, as the case may be, or of an MHO has been obtained.' (Schedule 5 of the 2000 Act).

6.3 It should be noted that it is intended to do away altogether with relatives' involvement in consent to detention under Mental Health legislation in the future. When the new mental health legislation is enacted, the 2000 Act will be amended accordingly.

6.4 You will already have looked at the following Exercise in Pack 2. It was designed to develop your thinking about **powers of attorney** in the general context of social work. You are asked to return to it, in relation to other powers under the Act, to treatment and detention under the 1984 Act and to the MHO role.

Do Exercise 4 now

7. Accounts and funds

7.1 Part 3 of the Act, the authority to **intromit** with funds of an adult, is discussed in Pack 2. There is one aspect of Part 3 that has specific relevance to MHOs: Section 26 (1) (c) states that an application form for authority to intromit shall be countersigned by a prescribed class of person. This prescribed class includes MHOs. You may therefore be called upon to sign such applications. They are received by the **public guardian** who issues authority to **intromit**. Your local authority should have procedures for MHOs involved in this process.

7.2 You will also need to know that the **power to intromit** cannot apply where there is a **continuing attorney**, or an **intervention** or **guardianship order** has been granted relating to the funds (Section 34). Officers of the local authority are specifically excluded from accessing funds under Part 3.

8. Medical treatment and research (Part 5)

8.1 This Part of the Act introduces statutory clarity to the previously uncertain common law position for those not capable of giving informed consent to their own medical treatment. It therefore includes treatment for mental disorder. This is discussed here in more detail than it was in Pack 2 because MHOs need to be absolutely clear about the parameters of the 1984 and the 2000 Acts in regard to treatment.

8.2 There are certain rules governing treatment that relate to all welfare powers under the Act. Apart from circumstances where it is considered immediately necessary, the 2000 Act only deals with treatment that does not require the use of force or detention to be administered. It also precludes treatment for a mental disorder which will place the adult in a hospital against their will. It further rules out treatment that is covered under Part X of the 1984 Act (i.e. irreversible treatments such as psycho-surgery, even when consent is given, and reversible ones such as Electro-Convulsive Therapy (ECT) and drug therapy for mental disorder, where consent is not given and where the treatment lasts for more than 3 consecutive months). These relate to Part 5 as much as they do to the exercise of welfare powers elsewhere. Regulations made under Part 5 of the 2000 Act also set out treatments which are exceptions to the general authority to treat.

8.3 Where there is such a proxy, the medical practitioner should obtain their agreement about the treatment. If there is disagreement between the doctor and the proxy, the doctor may ask the Mental Welfare Commission to nominate a second opinion doctor to decide upon the treatment. Either the doctor or the proxy, or any other person declaring an interest in the adult may then apply to the Court of Session to determine the outcome if following the Commission's nominated doctor's assessment, the treatment is still disputed.

8.4 MHOs have a key role in consenting to and applying for detention under the 1984 Act. This will continue to be the case within new Mental Health legislation.

8.5 MHOs have an expertise in considering at what point a person ceases to be showing passive acceptance of treatment for a mental disorder and begins to move into the realm where their continued care and treatment and their rights should be safeguarded by the mental health legislation. The MHO will still be required to make assessment for consent to and application for detention in this regard.

8.6 MHOs may also be involved in helping local authorities determine whether they would wish to request the authority to consent to medical treatment when they themselves are to be the **guardian**. MHOs should be aware as well of those sections of the Act which govern research involving an adult who lacks the capacity to consent to participation in the research (Sections 51 and 52) . This may be of relevance if, as a practitioner, you are considering undertaking research in any area of incapacity or where medical staff who are part of the multi-disciplinary team wish to involve an adult with incapacity in medical research.

8.7 These sections cover situations where the adult may become the subject of medical, nursing, dental or psychological research while being incapable of making a decision to participate. No surgical, medical, nursing, dental or psychological research shall be carried out on any adult who is incapable in relation to a decision about participation in the research unless the purpose is as stated below, and unless research of a similar nature cannot be carried out on an adult who is capable in relation to such a decision. This research must be directed to obtain knowledge of either the causes, diagnosis, treatment or care of the adult's incapacity or the effect of any treatment or care given during the adult's incapacity which relates to that incapacity. It must be likely to produce real and direct benefit; be approved by an ethics committee; entail minimal or no foreseeable risk; impose only minimal or no discomfort; and, be consented to by a proxy or the nearest relative. The research decision may be appealed against by any person declaring an interest in the adult to the sheriff and thence to the Court of Session.

Do Exercise 5 now

9. EXERCISES

Exercise 1

Evidencing risk to welfare: A case study

Please read the following case study. At the end of it questions are asked that encourage you to think of the MHO role specifically in relation to the above discussion on welfare and risk-benefit analysis.

Mrs MacAulay is a 93 year old woman who has lived alone in sheltered housing since the death of her husband five years ago. She has a moderate degree of dementia and she is physically frail. However, she is also extremely articulate and defensive of her independence in the face of concerns raised by her son Alisdair and her daughter Hughina.

Both Alisdair and Hughina live in the same small town as Mrs MacAulay and they have requested that the local authority do something to make their mother accept a move to a care home. They mention their mother's stubbornness, her physical frailty, her history of wandering out of the house and becoming disorientated, burning herself with the kettle while unsteady on her feet and posing a fire hazard by being forgetful with the cooker, as reasons why Mrs MacAulay can no longer live alone safely.

The warden of the sheltered housing complex has concerns that Mrs MacAulay has asked strangers in the street to come into her flat to help her put the gas fire on and that she has set the fire alarm off with burning toast on numerous occasions. The warden, Alisdair and Hughina all raise concerns about Mrs MacAulay's personal hygiene and it is apparent that she rarely changes or washes her clothes.

How many of the risks mentioned in the above study contain sufficient evidence for them to be included in a report for an application?

How might an MHO proceed in trying to obtain further evidence of risk, in pursuit of an application?

Applying an analysis of the risks to Mrs MacAulay's wishes insofar as they can be ascertained from the study and the views of the warden, Alisdair and Hughina, is there evidence that a move to a care home should be considered?

If not, what further evidence would you require to bring residential care into your frame of consideration?

In applying the principle of the least restrictive option, are there other services that you would wish to test out before considering residential care?

Taking care to address each question, write your answers in the space provided.

Discussion of Exercise 1

You would be justified in questioning the degree of risk to which Mrs MacAulay is exposed by her actions. That is not to say that the warden, her son and daughter are not justified in their concerns over her. It only means that you would have to explore their concerns further and uncover much more evidence of risk that could not be managed otherwise in order to present a report that averred risk to the extent that it might justify intervention. For example, while the risk to hygiene and social standing posed by her lack of personal care may be evident, the risks of fire, burning herself and wandering might seem too ill-defined and lacking in specific examples to justify intervention.

If further questioning of the warden, her son and daughter did not substantiate the concerns, an OT assessment might be a good way of making a more thorough assessment of actual risks.

It seems from the case that Mrs MacAulay is capable of articulating her opposition to a move into a care home. It would also seem that, even accepting the risks at face value, it may be premature to think about such a move. Less restrictive environmental manipulation (e.g. an alarm system; new toaster) should be attempted to see to what extent this could impact upon the behaviour giving rise to concern. In pursuit of the least restrictive option, an assessment of need for services that supported Mrs MacAulay in the home should be undertaken. Receipt of such services should be discussed with Mrs MacAulay and if she is not accepting of them, any application could request authority to put those services in place without her agreement. It is fundamental to the assessment of risk to consider the potential adverse effects of moving someone with dementia into an unfamiliar environment, particularly when they are resisting such a move. This is provided the medical assessments agree that Mrs MacAulay lacks the capacity to recognise the risk she poses to herself and that this action would not expose Mrs MacAulay to continued levels of unacceptable risk. Only if services fail to

or are demonstrably unable to sustain her in the community should consideration be given to seeking the power of residence via a guardianship application. In this way, benefit to Mrs MacAulay is addressed by accommodating her wishes, in so far as her wish to remain as independent as she can has been systematically explored, while continuing to ensure she is protected from unacceptable levels of risk.

Exercise 2

The following case study is intended to consolidate your thinking about the process of a **guardianship** assessment. This first section of it relates to care management as the first level of assessment. Please read it and answer the questions at each stage of the discussion. As usual, please take notes for discussion in the space provided.

Yasmin Jamal is a 19 year-old Syrian woman who came to Scotland two years ago with her family so that her father could study engineering. She has two younger brothers, both of whom attend school locally. However, Miss Jamal has a moderate learning disability with a mild degree of cerebral palsy and she has lived at home under the care of her mother. Until recently, she managed in this rather isolated setting reasonably well with no external services, helping her mother with such household tasks as she could manage. However, her mother has had a series of strokes and is no longer able to manage Miss Jamal's care. Her father is strongly opposed to her attending any services outside the home as none in the area is single sex and it would mean Miss Jamal mixing with men. The gender of the social worker or MHO may be crucial in attempts to engage with the family. He is insistent that the family can cope but Miss Jamal has come to the attention of medical services because she has burned her arm badly while trying to prepare a meal for her mother.

Furthermore, both her parents are strongly insistent that they wish no domiciliary services to come into the home. Her father is very preoccupied with his studies at this crucial moment in the course, to the point that he can be of little help in domestic work. The two sons do lend as much help as they can outside school hours, however, this generally leaves most of the hours from 9.00 to 4.00 on weekdays for Yasmin to be virtually unsupervised with her mother.

Yasmin, who speaks no English, has a strong Islamic faith. She has a good understanding of her father's view and will not go against it. She sees it as her place to care for her mother who is physically unable to care for herself since the last stroke.

With no link to the outside community and her mother so incapacitated, Miss Jamal is even more isolated in her home. However, she is reluctant to share her feelings of loneliness with anyone and she would not disrespect her father by articulating anything that might suggest that the family needs help. Since Miss Jamal is unable to read or write even in her

own language, cannot speak English and has poor arithmetical skills, she is unable to shop. Discussion with Miss Jamal following the incident in which she was burned cooking for her mother suggests that she neither has the physical co-ordination for such tasks nor the cognitive ability to understand her limitations and the dangers of the domestic environment. In fact Miss Jamal has a strong belief in her ability to cope, even though it can be observed that she does not know how to manage the cooker, the gas fire or the electric kettle.

Not only does Miss Jamal have no understanding of English, she seems to be unable to understand the concept that other people speak a different language and may not understand her speech. An interpreter would be essential if the principles of the Act are to be followed.

The general condition of the house is poor, with piles of unwashed dishes and laundry and bags of rubbish, underlining the impression that the family is not coping. In her appearance, it is evident that Miss Jamal is not managing her personal hygiene well either.

In this case study, the first stage of assessment would have been made by assessment and care management staff. In the absence of the assessment of Miss Jamal's care needs please draw up your own comprehensive list of her unmet needs, from the information available. Consider what sorts of services might be required to meet each of these needs.

Discussion of Exercise 2

As this is a case of some complexity, there is a need to separate out the issues. The mother seems to be in need of a community care assessment herself. To the extent that Miss Jamal is her carer, she may need a carer's assessment. She actually may lack the capacity to act as carer and ought not to be placed with this responsibility if this is the case. Her father may stand as the carer and be in need of a carer's assessment for either Miss Jamal or her mother or both. There is strong evidence that a more specialised assessment is required.

It may be that an OT assessment is required to ascertain exactly what Miss Jamal is capable of in the home. Before proceeding to an assessment for **guardianship**, it is generally a good idea to have a thorough multidisciplinary discussion and have some idea of the care

plan you might want to put into place. Of course, you may need a specialist assessment to help you tease out the nature of Miss Jamal's learning disability and how it compromises her social functioning. Resorting to powers under the Act would be necessary only when the authority to enable key aspects of the care plan to be implemented is necessary.

The second level of assessment for **guardianship** is the level at which the MHO first engages. You would not be thinking of **guardianship** as a potential remedy if you had no cause to consider Miss Jamal's situation in the light of the gateway definition for **guardianship**. Therefore you must consider the extent to which the following applies:

'the adult is incapable in relation to decisions about, or of acting to safeguard or promote his interests in, his property, financial affairs or personal welfare, and is likely to continue to be so incapable' (Section 58 (1) (a))

At this stage you may not feel that there is any indication that incapacity exists to the degree that **guardianship** is merited. In this case, an **intervention order** may be considered or, it may be that you find no cause for statutory intervention. If this is not the case, it becomes necessary to apply the gateway definition to the adult's situation in order to see how incapacity impacts upon the needs of the adult. Only those needs that arise out of the adult's inability to promote or safeguard their interests in financial affairs, property or welfare should be considered. Statutory intervention under the Act can only be applied in relation to those needs arising out of incapacity.

In assessing an individual's need for supportive services when there is a question of impaired capacity, it is essential, given the local authority's new statutory duty, to take forward **financial** and/or **welfare intervention** and **guardianship orders** where necessary, and that the assessment focuses as well on the individual's finances and how they are managed. In the normal course of intervening in such cases, local authority staff would want to ensure that Miss Jamal is receiving all benefits to which she is entitled. This assessment also should address whether the income she receives is used for her benefit and for her needs and that her wishes in this respect are being respected.

What evidence is there in the case study to suggest that Miss Jamal would meet the definition of incapacity in relation to potential use of a **guardianship order**?

There may be aspects of the assessment of Miss Jamal's needs to which she has the capacity to consent. For example, she may be able to recognise that while she always helped her mother she now ought to have some home care come into the house to assist her in caring for her mother. She may even be able to continue to help her mother with their assistance.

The issue of her unwillingness to go against her father's wishes is a difficult one. In a close knit family such as this, it may be a cultural issue and her preference, according to her faith. In this case you might feel there is no right to interfere. You should avoid making assumptions. If she lacks the capacity to determine her own wishes in the family environment, it may be that this is an issue related to her welfare which needs to be addressed in an application.

The medical assessment of incapacity has a crucial role to play in determining as precisely as can be the nature and degree of Miss Jamal's incapacity. An OT assessment, to determine exactly what skills Miss Jamal has and how capable she is of exercising them unsupervised, could assist the medical practitioner's assessment. Equally important might be an assessment by a psychologist specialising in learning disabilities to help establish to what extent an individual's learning disability is impairing their cognitive and social functioning. A multi-disciplinary conference can be crucial in the process of determining how to proceed with an application.

The third level of assessment demands that we consider the gateway definition through the lens of the principles of the Act. Therefore you will have to go through the process of examining all proposed interventions under the Act in the light of Section 1 (1) - Section 1 (5).

With reference to Section 58 (1) (b), you will need to satisfy yourself that **guardianship** is the only means under the Act by which Miss Jamal's interests may be safeguarded or promoted. Requesting specific powers under **guardianship**, these should be the least restrictive necessary to achieve the intended purposes of the order. The length of time for which the order is to be requested should also be considered in this context. The sheriff has the authority to treat a **guardianship order** as an **intervention order** if they feel this would be sufficient. Therefore, the MHO has to justify very carefully why **guardianship** is the appropriate intervention. The Code of Practice for Local Authorities Exercising Functions under the Act has excellent sections dealing with **intervention orders** and the circumstances in which they should be sought. This

section (5.34 and 5.35) examines this question of when a **guardianship** or **intervention order** might be the most appropriate action. These sections and the rest of the Code of Practice should be compulsory reading for all MHOs.

In order to make sure that you are proposing no greater restriction of the adult's freedom than is consistent with the purpose of the order, you would have to consider the nature and degree of incapacity in respect of each specific power requested. What this means is that you will have to consider the gateway definition not only in respect of Miss Jamal's general situation. You will also have to measure the definition against her capacity to meet each of the needs you have defined and her capacity to make informed choices in relation to the proposed services. It is also essential that you establish her views to the extent possible.

Within the least restrictive alternative lies an implication that, in order to justify the coercion of **guardianship**, the loss of liberty should be outweighed by the protection from risk. This balance should be used to weigh each of the powers asked for in the order.

Finally, account will have to be taken of the wishes of Miss Jamal and her parents.

It is usually important to ensure that all efforts have been made (and can be evidenced as having been attempted) to maximise the ability of Miss Jamal (and her family) to communicate as clearly as possible with those involved in her assessment. It is essential that this is a two way process. The quality of the assessment upon which all other action follows is dependent upon the clarity of the communication. Skilled independent interpreters should be used in situations of such complexity.

Assuming that you did find grounds that Miss Jamal met the gateway definition for **guardianship**, apply the above considerations to the list of needs and services around which you will frame your application for a **guardianship order**. These services, to which Miss Jamal lacks the capacity to consent, form the basis for the powers you require in the order.

In all of this discussion we have yet to acknowledge the significant issue of culture. The culture and religious views of the family would be a complicating factor here. The Race Relations Amendment Act 2000 provides a helpful legal framework in which to examine the complications of applying Adults with Incapacity law in such a case. The Amendment

Act imposes a duty on local authorities (and a range of other public bodies) to counter discrimination and to facilitate good relations between different cultures. And above all it is essential that every effort is made to engage appropriate translation services to ensure that there is no impediment to communication which affects the ability to make a proper assessment of Miss Jamal's health and social circumstances and which obscures Miss Jamal's own views of her situation and the proposed interventions. See principles under Section 1 (4) (a)

Looking back to the brief discussion in this pack relating to the roles and functions of the Public Guardian and Mental Welfare Commission, outline the relationship between your role as an officer of the local authority and these offices.

One view of the above situation would be that a clash of cultures is the central issue in any disagreement between you and the Jamal family in relation to meeting Miss Jamal's needs. With this in mind, how would you promote good relations between any potential service providers, the family and the local authority?

Discussion

We have already begun to address the issue of culture in the first part of this exercise. There are complications of working through an interpreter and working in a culturally sensitive manner. You may wish to seek advice on both of these if you are unfamiliar with Miss Jamal's cultural background.

Finding culturally acceptable services poses a challenge in areas of Scotland that do not have a high density population of people from minority cultures. Your authority should have a policy and procedures for addressing this.

Exercise 3

Transfer of guardianship exercise

In your discussion group, identify one case to present for discussion in which either an **intervention order** or (preferably) a **guardianship order** under the 2000 Act is a consideration. This might either be a case where the broader remit of new **guardianship** brings an adult into the frame, or it might be a case where there is a pre-existing order, which will convert from the 1984 Act to the 2000 Act in April 2002.

On the basis of your identification of a case, the person most familiar with it will be asked to make a brief presentation to the group, outlining the case. The group should then address the following questions:

If there is no pre-existing 1984 order, what needs would be met by an application? (What powers would be argued for to meet those needs?)

If the order is being transferred from one under the 1984 Act, are the three powers granted under Schedule 4 2 (1) adequate? If not what new powers would you require under Section 74 (application to the sheriff to vary an order)? Conversely, if transferred from the 1984 Act, are all three powers necessary?

Who should be the guardian(s)?

Are there any foreseeable disadvantages in making an application/transfer from the old to the new order?

How do the principles align with the gateway definition of incapacity to influence your assessment?

Discussion of Exercise 3

It is difficult to offer any comprehensive discussion as the cases that you have identified will be so varied. The purpose of this exercise was to focus your awareness on real situations and the fact that the 2000 Act brings wider powers and underlying general principles with it. Therefore, any 1984 orders which are transferred under the transitional arrangements will come into this framework. It is not adequate simply to allow the exercise of the three powers granted by the 1984 Act when

they come under the 2000 Act. If, for example, the power to require the adult to attend specified places for specific purposes is not needed, the order should be varied to exclude this power. Otherwise, the order is not an exercise of authority in the least restrictive manner.

On the other hand, if wider powers, not previously available under the 1984 Act, are required to allow necessary access to services which would benefit the adult, then application should be made to the sheriff to vary the powers accordingly.

If the powers of an order as transferred from the 1984 Act remain sufficient, the principles now govern the use of these powers. While good practice has suggested that anyone using the authority of **guardianship** under the 1984 Act should have been doing so with regard to the principles of the 2000 Act, it is now not just an issue of good practice. It is a duty imposed by law. At the heart of the consideration of why **guardianship** might be necessary and of benefit to the adult with incapacity lies the determination as to the person best suited to be **guardian**. While ultimately this is the decision of the applicant, the report provided by the Mental Health Officer or the Chief Social Work Officer has to pronounce on the suitability of the individual nominated in the application to be the appointed **guardian** (Section 57 (3) (b) (ii)). It will be helpful for those involved in this process to apply the same standards to which the sheriff must have regard under Section 59 (4):

- a) the accessibility of the individual to the adult and to his primary carer;
- b) the ability of the individual to carry out the functions of guardian;
- c) any likely conflict of interest between the adult and the individual;
- d) any undue concentration of power which is likely to arise in the individual over the adult;
- e) any adverse effects which the appointment of the individual would have on the interests of the adult; and
- f) such other matters as appear to him to be appropriate.

It should be noted that c) and d) do not apply to an individual by reason only of his being a close relative of, or person residing with, the adult.

These above issues should be the focus of an interview between either the applicant or the report writer and the proposed **guardian**. Both need to take account of the above factors. Such interviews should focus as well on the local authority's future role in supervising the **guardian** and the expectations they will have of the **guardian**.

Exercise 4

Continuing and welfare attorney case study

While you will have read this study before, please re-read it because it now contains extra detail. At the end of the case study, questions are asked that encourage you to think of the MHO role specifically in relation to issues thrown up by **welfare powers of attorney**.

Trina Smith is 43 years old. Her mother brought the family up alone, after the death of Trina's father when she was 4. Mrs Smith was often physically abusive to Trina and her siblings, but Trina seemed to survive this better than did her brother and sister. Trina's brother resorted to heroin abuse and her sister has frequent bouts of depression.

Ten years ago, when she went through the traumatic experience of nursing her mother through the terminal phases of Huntington's Disease, neither her brother or sister offered Trina any assistance. This caused an unresolved rift in the family. 3 years later, after much discussion with her brother and sister they all agreed to genetic counselling and testing, which in Trina's case proved positive for?.

This result devastated Trina because she and her partner, Dan, had hoped to have a family. The stress of these years manifested itself in Trina's increased dependency on alcohol (currently at about $\frac{3}{4}$ of a bottle of vodka a day). In turn, this put pressure on her relationship with Dan, who remained supportive to her, but who increasingly resorted to the use of physical force to control her when she was drunk.

While Trina recognises that she needs to be controlled while very drunk, there is an uncomfortable dynamic in this, in that her acceptance of Dan's use of force reflects her low self-esteem and awakens memories of her mother's abuse of her. Trina has now given up her part-time cleaning job and Dan has taken total control of their finances in order to restrict her access to alcohol.

Apart from her relationship with Dan and her infrequent contact with her siblings, Trina's only friends are those associated with her drinking.

Two months ago Trina began to develop symptoms that have just been identified as the onset of Huntington's Disease.

Were you involved in a professional capacity with Trina, what advantages and disadvantages might there be in encouraging her to explore legal advice on granting **continuing** and/or **welfare powers of attorney**?

Considering the concept of partial capacity, at what point in the progression of the disease would you begin to consider that Trina may lack the capacity to grant **power of attorney**?

As Trina's illness progresses, she develops symptoms of profound clinical depression. Within this her desperation and low self-esteem are expressed in self-harming episodes and suicidal behaviour when drunk. Dan, who is now Trina's **welfare attorney**, responds to this by stating that he should leave his job to be there full-time to watch over Trina.

Assuming that your assessment at this point is that detention under the 1984 Act is required, how might your role conflict with Dan's in the application of the law?

Discussion of Exercise 4

The advantage of **powers of attorney** in this case is that it enables someone like Trina to choose to whom she will entrust her decision-making powers, in the likely event that she may lose capacity to make certain key decisions regarding her personal welfare in particular. Without specific detail about how the disease has affected her, it is difficult to arrive at a precise conclusion as to when Trina would lack the capacity to grant power to an **attorney**. The question was asked more to focus your awareness on the possibility that a person may lack capacity to make certain decisions regarding property, finances, or personal welfare and yet retain capacity to grant **powers of attorney** to someone to act on their behalf in relation to these decisions.

Trina might have awareness of the progressive nature of the disease and wish to specify a point at which the power will become effective in the future; or she may have an awareness of the extent of her incapacity at present and wish the power to begin with immediate effect. Of course, if Trina is depressed, which happens as the disease develops, this may also impact upon her capacity to grant powers.

In relation to the last question concerning the consenting authority of a **welfare attorney**, Dan has authority whether or not this is specified in

the **welfare power of attorney** to consent to Sections 24 and 26 of the 1984 Act or to apply for Section 18. This is because he is a 'relative' and the 'nearest relative' in terms of the 1984 Act. There is no more conflict inherent in Dan's role as **attorney** in respect of these matters and yours as MHO than would lie between the MHO and a relative in respect of the '84 Act. Even though Dan may have authority to consent, he might still wish the MHO to take this responsibility from him.

Exercise 5

Medical treatment case studies

Case example A

Discuss the following scenarios and decide which ought to be managed by compulsory treatment under the Mental Health (Scotland) Act 1984, which ought to be treated by certificate under the 2000 Act and which ought to be left to the informed choice of the subject.

Richard is a 42 year old man who has a moderate learning disability, which has meant that he can only read simple words and his writing skills are restricted to copying words. He has limited ability to manage his own affairs but he holds down a job in a local garden centre and he lives in a supported tenancy, which he shares with his girlfriend.

Over the last six weeks Richard has been troubled by chest pains, which cause him considerable distress, but he has been unable to go to the doctor because of his fear of medical treatment.

Discussion

There is evidence that Richard has considerable capacity to make decisions on a range of aspects of his life. Chest pains may be indicative of anything from heartburn to an impending heart attack, so it would be important to get it checked out, if only to rule out potentially serious problems. However, if Richard is capable in terms of exercising his own treatment decisions, no-one has the authority to make such decisions for him even if we are seriously concerned about the implications for him. On the other hand, it is difficult to determine from this study whether Richard does have such capacity. He does have a learning disability which does impair his cognitive abilities to some extent and this may impact upon his ability to competently decide on medical issues.

If he really did have a heart attack, there would be a common law duty of care to secure treatment and to treat Richard.

Case example B

When Gill was 16, she was sexually abused by her foster-father while being looked after away from home. Now, at 20 years old, Gill is

pregnant, with no knowledge of the father's whereabouts. The pregnancy is almost at full term and Gill has been profoundly depressed for several months. Without treatment, this leaves her unmotivated and unable to care for herself. She also has high blood pressure which may put both herself and the baby at risk. However, because she is so severely depressed she is unable to venture any opinion regarding her assessed need for essential medical treatment in hospital for both her physical and mental ill health. Gill is passively compliant with the move to take her into hospital.

Discussion

Assuming Gill to be equally unable to consent to treatment for the depression, it would involve 'placing (the) adult in a hospital for treatment of a mental disorder against (her) will' (Section 47 (7) (c)). This clearly places it within the area of consideration for detention, probably under the 1984 Act. It is unlikely ECT would be considered, given the pregnancy and blood pressure, but were it so, the treatment would fall within the circumstances of treatment outlined in Part 10 of the 1984 Act. This would further preclude consideration of treatment options under the 2000 Act.

The blood pressure issue would be untreatable under the 1984 Act, not being a mental disorder. It would therefore be treatment that could be subject to certification by a medical practitioner under Section 47 of the 2000 Act, unless the treatment was so urgently necessary as to require immediate attention, in which case it would fall under the medical practitioner's common law duty of care.

Case example C

George is a 28 year old man who has a severe learning disability, who cannot read or write. His verbal communication is limited due to speech difficulties and restricted vocabulary. He has extremely limited ability to manage his own affairs. He attends a day centre, finding independent employment beyond his capability and he lives in a hostel where he requires supervision in meeting his basic personal needs.

George is subject to a **guardianship order**, which authorises his **guardian** (his brother), to manage his finances and to dictate his place of residence (but offers no other powers).

Over the last six weeks George has been troubled by severe lower gastric pain, which causes him considerable distress but he has been unable to go to the doctor because, when this occurred previously, it required a barium enema to investigate the source of the pain. George found the procedure extremely frightening and he has been scared of doctors and clinical settings ever since.

Discussion

The **guardianship order** has little relevance here insofar as it contains no authority to make treatment decisions. This would become an issue for certification under Section 47 of the 2000 Act. As an interested party, good practice would suggest that George's brother as nearest relative and **guardian** should be consulted. He might suggest that, should a barium enema be required, the doctor might wish to consider giving it under a general anaesthetic to avoid the anxiety it caused George the last time.

Case example D

Gordon is a 30 year old man who has a 10 year history of paranoid schizophrenia. Ordinarily he agrees to take medication, which subdues the symptoms of his illness well enough for him to live in the community. However, in the last few months he has discontinued treatment because of the uncomfortable side effects, and he is experiencing a resurgence of paranoid delusions.

Over the last month he has been troubled by chest pains, which cause him considerable distress, but he has been unable to go to the doctor because of his belief that the pain is caused by the presence of a transmitter, which aliens have planted in his chest. Without the transmitter he believes he would no longer be able to transmit radio waves that will secure world peace.

Discussion

The issues are not dissimilar to the discussion in regard to Gill, to the extent that treatment for the mental disorder would fall under the 1984 Act in as far as it can be anticipated that Gordon will resist it and will require admission to hospital. The chest pain would have to be investigated with the same priority that compelled investigation of Richard's chest pains in the first scenario. If this pain is physically based and not resulting from Gordon's mental disorder, such treatment

as is required would have to be given under certification under Section 47 of the 2000 Act.

Case example 5

Erica is 88 years old. She lives in a care home in which she is required to reside by a **guardianship order** necessitated by incapacity caused by severe dementia. Her care manager is the effective **guardian** on behalf of the Chief Social Work Officer of the local authority in which Erica lives. Without the order, Erica would seek to leave the home to return to her old flat, which is now let to a new tenant.

The order also contains authority for the **guardian** to make treatment decisions for Erica, who has various physical conditions for which she lacks the capacity to consent to treatment.

It is now felt that the home cannot manage Erica's behaviour, which has become upsetting to other residents. She appears to be experiencing an upsetting and prolonged paranoid psychotic episode and she spends much of the night screaming because of vivid hallucinations that she is being attacked.

Her doctor, who works closely with her **guardian**, feels that she would benefit from a period of investigation and stabilisation in hospital. This would also give those in the care home respite.

Discussion

Insofar as it would involve 'placing.. (Erica).. in a hospital for treatment of a mental disorder against (her) will' (Section 47 (7) (c)), the **guardian's** authority to make treatment decisions has no more authority than her doctor's authority to issue a certificate under Section 47. If she is confused and experiencing such psychotic episodes, there is reason to think that she is unable to agree to treatment herself and if she attempts to leave the care home, she will probably not agree to hospitalisation.

It would therefore seem that the 1984 Act would be used more appropriately in this situation, with either Section 18 or 24 being invoked, depending on the urgency.

Discussion

These scenarios offered only minimal background information, so there was considerable scope for a variety of personal interpretation of the situations.

One common theme in approaching all these cases should be consideration of the principles of the Act in relation to any proposed action. As an MHO, you should now be looking ahead to the principles proposed in the emerging new Mental Health legislation as well. Good practice would suggest that these principles should start informing MHO assessment and decision making now, even if these principles do not yet have the force of law.

The complementary relationship of the principles underpinning both the Adults with Incapacity Act and the new Mental Health legislation will help ensure that the appropriate action is taken where complex decisions must be made as to which Act should be used to promote the interests of vulnerable individuals whose incapacity is caused by their mental disorders.

ANNEX 1 – Resource List

Legislation

The Adults with Incapacity (Scotland) Act 2000 can be viewed on the HMSO web-site: www.hmso.gov.uk or purchased from the Stationery Office – www.hmso.gov.uk and can be downloaded from the Scottish Executive's website, as can the **Explanatory Notes** www.scotland.gov.uk/justice/incapacity/ Guidance from the Office of the Public Guardian can be downloaded from www.publicguardian-scotland.gov.uk/

Regulations

The Adults With Incapacity (Scotland) Act 2000 (Commencement No. 1) Order 2001 (SSI No.81)

The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2001 (SSI No.75)

The Adults with Incapacity (Certificates from Medical Practitioners) (Accounts and Funds) (Scotland) Regulations 2001(SSI No.76)

The Adults with Incapacity (Supervision of Welfare Attorneys by Local Authorities) (Scotland) Regulations 2001(SSI No. 77)

The Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001(SSI No.78)

The Adults with Incapacity (Evidence in Relation to Dispensing with Intimation or Notification) (Scotland) Regulations 2001 (SSI No.79)

The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001(SSI No. 80)

The Civil Legal Aid (Scotland) Amendment Regulations 2001 (SSI 2001 No.82).

The Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (S.S.I. 2002/95)

The Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (S.S.I. 2002/96)

The Adults with Incapacity (Recall of Welfare Guardians' Powers) (Scotland) Regulations 2002(S.S.I. 2002/97)

The Adults with Incapacity (Non-compliance with Decisions of Welfare Guardians) (Scotland) Regulations 2002 (S.S.I. 2002/98)

Civil Legal Aid (Scotland) Amendment Regulations 2002 (S.S.I. 2002/88)

Copies of the Act, Explanatory Notes and Regulations are available from:

Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
Tel 0870 606 5566
Fax 0870 606 5588
www.scotland-legislation.hmsso.gov.uk/

Codes of Practice

Code of Practice for local authorities exercising functions under the Act

Code of Practice for persons authorised under part 3 to access funds of an adult

Code of Practice for **continuing** and **welfare attorneys**

Code of Practice for persons authorised under **intervention orders** and **guardianship**

Code of Practice for persons authorised to carry out medical treatment or research

Awaiting publication

Code of Practice for managers of authorised establishments

Code of Practice for supervisory bodies

The Codes of Practice are available from the following address:

Scottish Executive
Justice Department
Civil Law Division
Floor 2 West (Rear)
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel 0131 244 2193

Alternatively all documents may be downloaded from the website
www.scotland.gov.uk/justice/incapacity/

Forms

The forms required to accompany an application for an **intervention or guardianship order** are schedules to the Adults with Incapacity (Reports in Relation to **guardianship** and **intervention orders**) (Scotland) Regulations 2002. Details of the forms are as follows:-

- AWI [1] Report of incapacity to accompany application for guardianship, renewal of **guardianship** or an **intervention order**
- AWI [2] Mental Health Officer's report to accompany application for **guardianship** relating to personal welfare
- AWI [3] Mental Health Officer's report to accompany application for renewal of **guardianship** relating to personal welfare
- AWI [4] Mental Health Officer's report to accompany application for an **intervention order** relating to personal welfare
- AWI [5] Chief Social Work Officer's report to accompany an application for **guardianship** relating to personal welfare
- AWI [6] Chief Social Work Officer's report to accompany an application for renewal of **guardianship** relating to personal welfare
- AWI [7] Chief Social Work Officer's report to accompany an application for an **intervention order** relating to personal welfare

These forms are available electronically from the website at www.scotland.gov.uk/justice/incapacity. This facility allows the text boxes in the forms to be expanded as necessary. If you have difficulty accessing the forms please telephone 0131 244 2193.

The forms for applying to the local authority or the Mental Welfare Commission for recall of welfare powers of a **guardian** are schedules to the Adults with Incapacity (Recall of Guardian's Powers) (Scotland) Regulations 2002. Details of the forms are as follows:-

AWI[11]	Application to Mental Welfare Commission for recall of powers of a guardian relating to personal welfare
AWI[12]	Application to local authority for recall of powers of a guardian relating to personal welfare
AWI[13]	Medical report of capacity to accompany an application to Mental Welfare Commission or local authority for recall of powers of a guardian relating to personal welfare
AWI[14]	Intimation by Mental Welfare Commission of application or intention to recall powers of a guardian relating to personal welfare
AWI[15]	Intimation by local authority of application or intention to recall powers of a guardian relating to personal welfare
AWI[16]	Intimation by Mental Welfare Commission of proposal to refuse an application for recall of powers of a guardian relating to personal welfare
AWI[17]	Intimation by local authority of proposal to refuse an application for recall of powers of a guardian relating to personal welfare
AWI[18]	Decision by Mental Welfare Commission on recall of powers of a guardian in relation to personal welfare
AWI[19]	Decision by local authority on recall of powers of a guardian in relation to personal welfare

These forms are available electronically from the website at www.scotland.gov.uk/justice/incapacity. This facility allows the text boxes in the forms to be expanded as necessary. If you have difficulty accessing the forms please telephone 0131 244 2193.

Training resource pack

The Scottish Executive commissioned a series of training seminars on the Act organised by ENABLE and ASAD in Spring of 2001. A training resource pack was produced for seminar participants and is available on the Scottish Executive website:

www.scotland.gov.uk/justice/incapacity

The pack includes the following materials:

Section 1

- Introduction to the Act
- Principles and definitions
- Concept of capacity and assessing incapacity

Section 2

- Welfare interventions

Section 3

- Financial interventions

Section 4

- Roles and responsibilities of organisations and individuals

Reading

Astell A.J, Wilkinson H.A (2001) Adults with Incapacity (Scotland) Act 2000: A survey of Scottish professionals. University of Abertay, Dundee.

Scottish Executive (2000) The same as you? A review of services for people with learning disabilities.

Jacques A, Jackson G (2000) Understanding Dementia. Churchill Livingstone.

McKay C, and Patrick H, The Community Care Maze – the law and your rights to community care in Scotland. ENABLE and Scottish Association for Mental Health. Now out of print but available in libraries.

Child Poverty Action Group (2001) Paying for Care Handbook. 2nd Edition.

The Law Society and British Medical Association (1995) Assessment of Mental Capacity. Guidance for Doctors and Lawyers.

The British Medical Association (1999) Withholding and Withdrawing Life-prolonging Medical Treatment. Guidance for Decision Making

Scottish Executive (2001) New Directions. Report on the Review of the Mental Health (Scotland) Act 1984. (Millan Report).

Baumhover L.A, Beall S C (1996) Abuse, Neglect and Exploitation of Older Persons, Strategies for Assessment and Intervention. Jessica Kingsley.

The Inquiry into the care of Mrs K aged 90, The Mental Welfare Commission, November 2001

Useful addresses

Statutory authorities under the Act

The Office of the Public Guardian
Hadrian House
Callander Business Park
Falkirk FK1 1XR
Tel: 01324 678300

www.publicGuardian-scotland.gov.uk/

The Mental Welfare Commission for
Scotland
Argyle House
3 Lady Lawson Street
Edinburgh EH3 9SH
Tel: 0131 222 6111

www.mwc.scot.org.uk

Courts

Scottish Court Service
Hayweight House
23 Lauriston Street
Edinburgh EH3
Tel: 0131 229 9200
www.scotcourts.gov.uk

Contacts on specific issues

The Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh
EH3 7YR
Tel: 0131 226 7411
www.lawscot.org.uk

Legal Aid
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh EH3 7RN
Tel: 0131 226 7061
www.slab.org.uk

Advocacy 2000
134 Ferry Road
Edinburgh EH6 4PQ
Tel: 0131 554 7878

Criminal Injuries Compensation Board
Tay House
300 Bath Street
Glasgow G2 4LN
Tel: 0141 331 2726
www.cica.gov.uk

Other useful contacts

ASCS – Advice Service Capability
Scotland
11 Ellersly Road
Edinburgh EH12 6HY
Textphone/Minicom 0131 346 2529

Age Concern Scotland
113 Rose Street
Edinburgh EH2 3DT
Tel: 0131 220 3345

Alzheimer Scotland-Action on Dementia
22 Drumsheugh Gardens
Edinburgh EH3 7RN
Tel: 24hr freephone Helpline 0808 808
3000
www.alzscot.org

Carers UK
3rd Floor
91 Mitchell Street
Glasgow G1 3LN
Tel: 0141 221 9141

Citizens Advice Bureau
Address in your local phone book or from
Citizens Advice Scotland
26 George Street
Edinburgh
Tel: 0131 667 0156
www.cas.org.uk

ENABLE
6th Floor
7 Buchanan Street
Glasgow G1 3HL
Tel: 0141 226 4541

Sense Scotland
5th Floor
45 Finnieston Street
Glasgow G3 8JU
Tel: 0141 564 2444
www.sensescotland.org.uk

Royal College of Speech and Language
Therapists
2 White Hart Yard
London SE1 1NX
Tel: 020 7378 1200

Scottish Association for Mental
Health
Cumbrae House
15 Carlton Court
Glasgow G5 9JP
Tel. 0141 568 7000
www.samh.org.uk

Scottish Executive

Health Department
Community Care Division
Branch 3
Area 3ER
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: 0131 244 5389

Health Department
Social Work Services Inspectorate, Health Team
Area 3ER
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: 0131 244 3752

Justice Department
Civil Law Division
Area 2WR
St Andrew's House
Regent Road
Edinburgh EH11 3DG
Tel: 0131 244 4212

Health Department
Public Health Division
Area 3E
St Andrew's House
Regent Road
Edinburgh EH1 1DG
Tel: 0131 244 2545

ANNEX 2 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Part of the Act	Type of Intervention		Previous Consent Required by Adult	Who can Intervene?					
	Welfare	Property/ Financial		Relative/ Friend/Carer/ Neighbour	Lawyer	Officer of Local Authority	Other Professionals eg CPN, Care Staff, Hospital	Doctor	Medical Certificate/ Report Required
2	Welfare Attorney	Continuing Attorney	Yes	Yes	(Certifies ability to understand) Yes	Cannot intervene	No	(Certifies ability to understand)	Not Statutory
3 ²		Intromission with funds	No	Yes	(Counter signature) can act as withdrawer but unpaid.	Cannot intervene (MHO can countersign)	No (Nurses may countersign)	(Counter signature)	Yes
4		Management of residents' finances	No	No	No	Care Home Manager	Care Home and Hospital Managers	No	Yes
5	Authority to Treat		No	A person having an interest can appeal	As Proxy ³ can object or consent	As Proxy can object or consent	As Proxy can object or consent	Yes	Yes
6	Intervention Order	Intervention Order	No	Yes	Yes	Yes (also report)	Could make application	No	Yes
6	Guardianship Order	Guardianship Order	No	Yes	Yes (also report) (Finance only)	Yes (welfare only) (also report)	Could make application	No	Yes

² Under Part 3 'Intromission with Funds' countersigning relates to a declaration in the application form that the applicant is a 'fit and proper person to intromit with funds' (Section 26(1)(c))

³ Proxy means a person appointed under the Act to act for an adult with incapacity, to include welfare and continuing attorneys, guardians and persons authorised under intervention orders

ANNEX 3 – Adults With Incapacity Training Advisory Group

John Armstrong	Social Work Department City of Edinburgh Council
Susan Baird	Senior Officer Glasgow City Council Social Work Department
Juliet Cheetham	Social Work Commissioner Mental Welfare Commission for Scotland
Bill Cook	Highland Council Social Work Services
Sandra Costigan	Senior Manager Staff Development & Training Fife Social Work Department
Dr Alan Jacques	Consultant Psychiatrist Royal Edinburgh Hospital
Kitty Mason	Principal Planning & Commissioning Officer City of Edinburgh Council
Christina Naismith	Social Work Department City of Edinburgh Council
Mike Nolan	Principal Service Development Officer East Lothian Council
Pippa Sutton	Finance Manager Scottish Borders Council

ANNEX 4 - Glossary

The following is an explanation of terms that occur in the text.

Adult	Refers to a person over the age of 16 years. It is usually a reference to an adult with incapacity.
Attorney	Is a person who has been selected by an adult while still capable of exercising informed choice to grant powers which take effect when the granter becomes incapable. Powers of attorney are separated in the 2000 Act into continuing powers (which deal with financial affairs of the adult) and welfare powers (which deal with the personal welfare of the adult).
Care Manager	Is the term used to refer to Social Work Officers who have specific duties in the assessment of need and the management of packages of care for people under the NHS and Community Care Act 1990.
Care Plan	This term is used generically in the text to cover all personal care plans which result from a multidisciplinary assessment of needs. The term must be read in context but can refer as well to treatment plans and/or nursing care plans for those in receipt of health care services.
Chief Social Work Officer	Is the most senior Social Work Officer in a local authority line management structure. It is the person with responsibility for the delivery of social work services in a local authority.
Curator Bonis	Is a power to manage the estate of a person who is not capable of so doing. For any person over the age of 16, as of April 2002, this power has become financial guardianship under the framework of the 2000 Act.

Direct Care Staff	This refers to all staff who are providing care on an employed basis this includes such posts as care staff in care homes, home care staff and day care staff.
Duty of Care	Is a duty to exercise due skill and care in exercising powers one has been given in relation to another person.
Granter	Is the term for a person who grants Power of Attorney to another.
Guardian	Means a person appointed by the sheriff to set or make decisions for an adult under Part 6 of the Act. A financial guardian means a guardian with financial powers. A welfare guardian means a guardian with welfare powers. Guardianship under the Mental Health (Scotland) Act 1984 no longer exists with the implementation of Part 6 of the 2000 Act in April 2002.
Intervention Order	Means an order made by the sheriff, under Part 6 of the Act that something should be done, or a decision made, on behalf of an adult.
Intromission	To intromit means to 'deal with' the funds of an adult with incapacity as outlined in Part 3 of the Act.
Liability	In reference to Section 82, 'limitation of liability', means that the person liable is legally responsible for their actions or failure to act. It implies that a person who is liable may face legal action in either a Civil or Criminal Court as a result of actions or failure to act if they failed to do so reasonably, with due care and in accordance with the principles of the Act.
Local authority	Is the term used in legislation to refers to any local government or Island Council in Scotland. By implication, it refers to the local authority's duties in relation to social work services as discussed in this text.

MHO	Mental Health Officer is the term given by the Mental Health (Scotland) Act 1984, to specially trained social workers appointed by their employing local authority to perform specific duties relating to detention in hospital and guardianship of people with mental disorder. The new roles that the 2000 Act gives to MHOs are explained throughout the text.
Proxy	Is the term used to describe any person authorised to make decisions or to take action on behalf of an adult whose capacity has become impaired.
Social Work Officer	Is the term used in this text and by the Codes of Practice to cover 'social work services staff in the broad sense, including, where appropriate, qualified social work officers, occupational therapists, etc, employed to provide social work or similar services.' (The Code of Practice for Local Authorities, 2001, Scottish Executive/Astron.)
Tutor Dative and Tutor-at-Law	Are people appointed by the Court to exercise powers, manage aspects of an adult's welfare and, occasionally, to manage short-term aspects of financial affairs. As of April 2002, these powers have become Guardianship Orders under the framework of the 2000 Act.

ANNEX 5

Report of incapacity to accompany

*Application for Guardianship**
*Application for renewal of Guardianship**
*Application for intervention order**

**Adults with Incapacity (Scotland) Act
2000**

AwI[1]
SECTION 57(3)(A)

PART A DETAILS OF REPORT WRITER AND ADULT

I (name)

being a medical practitioner with the following professional address:

(state full postal address for contact)

Telephone E-mail

[complete the following box if applicable⁴; otherwise, delete]

and being approved by the Health Board for the purposes of section 20 of the Mental Health (Scotland) Act 1984 as having special experience in the diagnosis or treatment of mental disorder,

hereby confirm that I examined and assessed the following adult ('the adult')

Name

Residing at (state full postal address)

Date of birth

On (give date of examination and assessment)

* delete the two which do not apply

⁴ Where the incapacity is by reason of mental disorder, one of the medical practitioners must be approved for the purposes of section 20 of the 1984 Act as having special experience in the diagnosis or treatment of mental disorder (section 57 (3)(a) of the Act)

PART B PURPOSE OF EXAMINATION AND ASSESSMENT

The examination and assessment was in connection with a proposed application for (tick whichever applies)

A Guardianship order*/renewal of Guardianship order*/an intervention order

- a) with power over personal welfare
- b) with power over property and/or financial affairs
- c) with power over personal welfare, property and/or financial affairs.

Name of applicant or person requesting report

Name(s) of person or persons nominated in application (if known)

PART C FINDINGS OF EXAMINATION AND ASSESSMENT

On the basis of my examination and assessment I am of the opinion that the adult named in Part A has (tick box for whichever of the following applies and add comments on nature

- a) Mental disorder⁵

Nature

And /or

- b) Inability to communicate because of physical disability

Nature

* delete the two which do not apply

⁵ mental disorder means mental illness (including personality disorder) or mental handicap however caused or manifested; but an adult shall not be treated as suffering from mental disorder by reason only of promiscuity or other immoral conduct, sexual deviancy, dependence on alcohol or drugs, or acting as no prudent person would act.

I am of the opinion that the condition mentioned in Part C has impaired the capacity of the adult named in Part A to make decisions about or to act to safeguard or promote his/her interests in his/her property, financial affairs or personal welfare in relation to the matters covered in the proposed application. The reason for my opinion is given below.

Please indicate the findings of your examination and assessment, so far as they relate to the adult's capacity in relation to the matters which are the subject of the application.

Please indicate the likely duration of the incapacity

Please indicate the extent to which you have been able to communicate with the adult,

Please indicate the extent to which you have been able to consult the nearest relative, primary carer, and anyone else having an interest in, or knowledge of, the adult.

PART D DECLARATION OF INTEREST

Delete (a) or (b) (a) I am not related to the adult

(b) I am related to the adult being his /her
(state relationship)

AND

Delete (c) or (d) (c) I have no pecuniary interest
*in the appointment of a Guardian or
Guardians**
*in the renewal of Guardianship**
*in the intervention order sought**

(d) I have a pecuniary interest
*in the appointment of a Guardian or
Guardians**
*in the renewal of Guardianship**
*in the intervention order sought**

The nature and extent of that interest is

Signed⁶

Date

* delete the two which do not apply.

⁶ Please note that the application and accompanying reports will be served on interested parties.

**Mental Health Officer's report to accompany application for Guardianship relating to personal welfare *
personal welfare and property and/or financial affairs ***

Adults with Incapacity (Scotland) Act 2000

AWI[2]

SECTION 57(3)(B)

PART A AUTHOR OF THE REPORT

I

(Give full name of local authority for whom you are acting in this case and work address.)

Am a Mental Health Officer appointed by

Address

Tel No

E-mail

* Delete the one which does not apply

PART B THE ADULT

On (Give date of interview and assessment of the adult)

I interviewed and assessed the adult who is the subject of this application

(name)

(Give full name, address and date of birth of the adult, as on the application)

Of

(address)

(DOB)

PART C THE APPLICANT

This report is written in relation to the application by

(state name of applicant)

PART D

Please state your opinion in terms of the general principles as set out in section (1) of the Act where possible. Please comment fully on the adult's social circumstances.

APPROPRIATENESS OF THE ORDER APPLIED FOR

I have read the application, have taken note of the powers sought and the period of Guardianship being applied for. My opinion as to the appropriateness of the order sought is as follows:-

1 Will the proposed order (a) benefit the adult and (b) will the benefit be unable to be reasonably achieved without the order?

(a) Describe how the proposed order will benefit the adult.

(b) Describe how the benefit will be unable to be reasonably achieved without the order.

2 Will the proposed order be the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the order?

(Describe any alternatives considered. These may include a measure outwith the 2000 Act, a different measure under the 2000 Act or an order containing less restrictive powers. State whether you support the terms of the order sought or support it subject to amendment.)

3 What are the past and present wishes and feelings of the adult?

State

(a) the past and present wishes and feelings of the adult about the order sought and the powers requested, so far as you have been able to ascertain them.

(b) If you have not been able to ascertain the adult's wishes and feelings, please explain the barriers to this.

(c) describe the efforts you made to overcome these barriers.

4 What are the views of the nearest relative of the adult?

Name:

Relationship:

State

(a) the views of the nearest relative about the order sought if you have obtained these. Note this section relates to the relative's own views. Information which the relative wishes to provide about the adult's wishes and feelings should be included (and attributed) in section 3(a).

(b) Do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so?) Note: the nearest relative should not be consulted where an order to that effect has been made under section 4 of the Act.

5 What are the views of the primary carer of the adult?

Name:

Relationship:

State

(a) the views of the primary carer about the order sought if you have obtained these.

(b) do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so?

Complete if applicable

6

Name:

Appointment (e.g. financial Guardian):

State

(a) the views of such a person about the order sought if you have obtained these.

(b) Do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so? (Continue on a separate sheet if there is more than one such person).

Complete if applicable

7 What are the views of any other relevant person which have been made known to you?

Name:

Connection to adult:

State

(a) the views of any other relevant person which have been made known to you and which are relevant to the order sought.

(b) Do you agree with these views? (Continue on a separate sheet if there is more than one such person.)

8 Are there any other matters which seem to you to be relevant?

PART E PROPOSED GUARDIAN'S SUITABILITY

[Do not complete if the proposed Guardian is the Chief Social Work Officer.]

(If there is more than one proposed Guardian with personal welfare powers please duplicate Part E and complete for each nominated person.)

Name of proposed Guardian:

Relationship to adult:

Sections 59(3) & (4) of the Act require the sheriff to consider certain factors before appointing an individual as a Guardian; comment on the suitability of the person nominated under the headings in Part E where possible. Refer as appropriate to discussion with him or her.

My opinion as to the suitability of the person nominated is as follows:-

1.

2.

3. Accessibility to adult and primary carer.

4. Ability to carry out the functions of a Guardian with personal welfare powers.

5. Any likely conflict of interest between the Guardian and the adult. (NB: Being a close relative or living in the same household as the adult does *not* on its own count as conflict of interest.)

6. Any undue concentration of power which is likely to arise in the proposed Guardian over the adult. (NB: Being a close relative or living in the same household as the adult does *not* on its own count as undue concentration of power.)

7. Any adverse effects which the appointment of the proposed Guardian would have on the interests of the adult.

8. Any other matters which seem to you to be relevant⁷.

⁷ Where an application relates to both welfare and financial or property matters you should comment on the extent to which you have been able to cover the financial and/or property aspects of the application.

PART F: CONCLUSION

My general conclusions on the appropriateness of the order sought and the suitability of the proposed Guardian(s) are as follows:

PART G: DECLARATION OF INTEREST

Delete (a) or (b) (a) I am not related to the adult

(b) I am related to the adult being his /her
(state relationship)

AND

Delete (c) or (d) (c) I have no pecuniary interest in the appointment of a
Guardian or Guardians

(d) I have a pecuniary interest in the appointment of a
Guardian or Guardians

The nature and extent of that interest is

Signed⁸

Dated

⁸ Please note that the application and accompanying reports will be served on interested parties.

Mental Health Officer's report to accompany application for renewal of Guardianship

relating to personal welfare
personal welfare and property and /or
financial affairs**

Adults with Incapacity (Scotland) Act 2000
SECTION 57(3)(B) **AwI [3]**

PART A AUTHOR OF THE REPORT

I

(Give full name, local authority for whom you are acting in this case, and work address.)

am a Mental Health Officer appointed by

Address

Tel No

E-mail

PART B THE ADULT

On

(Give date of interview and assessment of the adult)

I interviewed and assessed the adult who is the subject of this application

(name)

(Give full name, address and date of birth of the adult, as on the application)

Of

(address)

(DOB)

PART C THE APPLICANT

This report is written in relation to the application by

(state name of applicant)

* Delete the one which does not apply

PART D

APPROPRIATENESS OF THE ORDER APPLIED FOR

Please state your opinion in terms of the general principles as set out in section (1) of the Act where possible. Please comment fully on the adult's social circumstances

I have read the application, have taken note of the powers sought and the renewal of Guardianship being applied for. My opinion as to the appropriateness of the order sought is as follows:-

1 Will the proposed order (a) benefit the adult and (b) will the benefit be unable to be reasonably without the order?

(a) Describe how the proposed order will benefit the adult.

(b) Describe how the benefit will be unable to be reasonably achieved without the order.

2 Will the proposed order be the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the order?

(Describe any alternatives considered. These may include a measure outwith the 2000 Act, a different measure under the 2000 Act or an order containing less restrictive powers. State whether you support the terms of the order sought or support it subject to amendment.)

3 What are the past and present wishes and feelings of the adult?

State

(a) the past and present wishes and feelings of the adult about the order sought and the powers requested, so far as you have been able to ascertain them.

(b) If you have not been able to ascertain the adult's wishes and feelings, please explain the barriers to this.

(c) describe the efforts you made to overcome these barriers.

4 What are the views of the nearest relative of the adult?

Name:

Relationship:

State

(a) the views of the nearest relative about the order sought if you have obtained these. Note this section relates to the relative's own views. Information which the relative wishes to provide about the adult's wishes and feelings should be included (and attributed) in section 3(a).

(b) Do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so? Note: the nearest relative should not be consulted where an order to that effect has been made under section 4 of the Act.

5 What are the views of the primary carer of the adult?

Name:

Relationship:

State

(a) the views of the primary carer about the order sought if you have obtained these.

(b) do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so?

Complete if applicable

6 What are the views of any Guardian, continuing attorney or welfare attorney ?

Name:

Appointment (e.g. financial Guardian):

State

(a) the views of such a person about the order sought if you have obtained these.

(b) Do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so? (Continue on a separate sheet if there is more than one such person).

Complete if applicable

7 What are the views of any other relevant person which have been made known to you?

Name:

Connection to adult:

State

(a) the views of any other relevant person which have been made known to you and which are relevant to the order sought.

(b) Do you agree with these views? (Continue on a separate sheet if there is more than one such person.)

8 Are there any other matters which seem to you to be relevant?

PART E PROPOSED GUARDIAN'S SUITABILITY

[Do not complete if the Guardian is the Chief Social Work Officer.]

(If there is more than one Guardian with personal welfare powers please duplicate Part E and complete for each Guardian or proposed Guardian.)

Name of proposed Guardian:

Relationship to adult:

Sections 59(3) & (4) of the Act require the sheriff to consider certain factors before appointing an individual as a Guardian; comment on the suitability of the person nominated under the headings in Part E where possible. Refer as appropriate to discussion with him or her.

My opinion as to the suitability of the person nominated is as follows:-

1. Awareness of the adult's circumstances and conditions and of the needs arising from such circumstances and conditions.

2. Awareness of the functions of a Guardian.

3 Accessibility to adult and primary carer.

4. Ability to carry out the functions of a Guardian with personal welfare powers

5. Any likely conflict of interest between the Guardian and the adult. (NB: Being a close relative or living in the same household as the adult does *not* on its own count as conflict of interest.)

6. Any undue concentration of power which is likely to arise in the Guardian over the adult. (NB: Being a close relative or living in the same household as the adult does *not* on its own count as undue concentration of power.)

7. Any adverse effects which the reappointment of the Guardian would have on the interests of the adult.

8. Any other matters which seem to you to be relevant.⁹

⁹ Where an application relates to both welfare and financial or property matters you should comment on the extent to which you have been able to cover the financial and/or property aspects of the application.

PART F: CONCLUSION

My general conclusions on the appropriateness of the renewal of Guardianship and the suitability of the Guardian(s) for reappointment are as follows:

PART G: DECLARATION OF INTEREST

Delete (a) or (b) a) I am not related to the adult

(b) I am related to the adult being his /her
(state relationship)

AND

Delete (c) or (d) c) I have no pecuniary interest in the appointment of a
Guardian or Guardians

(d) I have a pecuniary interest in the appointment of a
Guardian or Guardians

The nature and extent of that interest is

Signed¹⁰

Dated

¹⁰ Please note that the application and accompanying reports will be served on interested parties.

Mental Health Officer's report to accompany application for intervention order

**AwI [4]
Adults with Incapacity (Scotland) Act 2000
SECTION 57(3)(B)**

relating to personal welfare
personal welfare and property and/or
financial affairs**

PART A AUTHOR OF THE REPORT

I

(Give full name, local authority for whom you are acting in this case, and work address.)

am a Mental Health Officer appointed by

Address

Tel No

E-mail

PART B THE ADULT

On

(Give date of interview and assessment of the adult)

I interviewed and assessed the adult who is the subject of this application

(name)

(Give full name, address and date of birth of the adult, as on the application)

Of

(address)

(DOB)

PART C THE APPLICANT

This report is written in relation to the application by

(state name of applicant)

* Delete the one which does not apply

PART D

Please state your opinion in terms of the general principles as set out in section (1) of the Act where possible. Please comment fully on the adult's social circumstances.

APPROPRIATENESS OF THE ORDER APPLIED FOR

I have read the application, have taken note of the powers sought and the period being applied for (if applicable). My opinion as to the appropriateness of the order sought is as follows:-

1 Will the proposed order (a) benefit the adult and (b) will the benefit be unable to be reasonably achieved without the order?

(a) Describe how the proposed order will benefit the adult.

(b) Describe how the benefit will be unable to be reasonably achieved without the order.

2 Whether the proposed order is the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the order.

(Describe any alternatives considered. These may include a measure outwith the 2000 Act, a different measure under the 2000 Act or an order containing less restrictive powers. State whether you support the terms of the order sought or support it subject to amendment.)

3 What are the past and present wishes and feelings of the adult?

State

(a) the past and present wishes and feelings of the adult about the order sought and the powers requested, so far as you have been able to ascertain them.

(b) If you have not been able to ascertain the adult's wishes and feelings, please explain the barriers to this.

(c) describe the efforts you made to overcome these barriers.

4 What are the views of the nearest relative of the adult?

Name:

Relationship:

State

(a) the views of the nearest relative about the order sought if you have obtained these. Note this section relates to the relative's own views. Information which the relative wishes to provide about the adult's wishes and feelings should be included (and attributed) in section 3(a).

(b) Do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so? Note: the nearest relative should not be consulted where an order to that effect has been made under section 4 of the Act.

5 What are the views of the primary carer of the adult?

Name:

Relationship:

State

a) the views of the primary carer about the order sought if you have obtained these.

(b) do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so?

Complete if applicable

6 What are the views of any Guardian, continuing attorney or welfare attorney?

Name:

Appointment (e.g. financial Guardian):

State

(a) the views of such a person about the order sought if you have obtained these.

(b) Do you agree with these views?

(c) If you have not obtained these views, why was it not reasonable or practicable to do so? (Continue on a separate sheet if there is more than one such person).

Complete if applicable

7 What are the views of any other relevant person which have been made known to you?

Name:

Connection to adult:

State

(a) the views of any other relevant person which have been made known to you and which are relevant to the order sought.

(b) Do you agree with these views? (Continue on a separate sheet if there is more than one such person.)

8 Are there any other matters which seem to you to be relevant?

PART E SUITABILITY OF PERSON NOMINATED TO BE AUTHORISED UNDER AN INTERVENTION ORDER

(Complete in cases where under section 53(5)(b) a person is nominated in the application to take action or make a decision, including those where the person nominated is an officer of the local authority.)

Name of nominee:

Relationship to adult:

Sections 59(3) & (4) of the Act require the sheriff to consider certain factors before appointing an individual as a Guardian; These provide useful guidance as to what information should be contained in the report on the suitability of a person named in an application for an intervention order. Please therefore comment on the suitability of the person nominated under the headings in Part E where possible. Refer as appropriate to discussion with him or her.

My opinion as to the suitability of the person nominated is as follows:-

1 Awareness of the adult’s circumstances and conditions and of the needs arising from such circumstances and conditions.

2 Awareness of the functions of a person authorised under an intervention order.

3 Accessibility to adult and primary carer.

4 Ability to carry out the functions of a person authorised under an intervention order with personal welfare powers.

5 Any likely conflict of interest between the person nominated and the adult. (NB: Being a close relative or living in the same household as the adult does *not* on its own count as conflict of interest.)

6 Any undue concentration of power which is likely to arise in the person nominated over the adult. (NB: Being a close relative or living in the same household as the adult does *not* on its own count as undue concentration of power.)

7 Any adverse effects which the appointment of the person nominated would have on the interests of the adult.

8 Any other matters which seem to you to be relevant.¹¹

¹¹ Where an application relates to both welfare and financial or property matters you should comment on the extent to which you have been able to cover the financial and/or property aspects of the application.

PART F: CONCLUSION

My general conclusions on the appropriateness of the order sought and the suitability of the person nominated (if any) are as follows:

PART G: DECLARATION OF INTEREST

Delete (a) or (b) (a) I am not related to the adult

(b) I am related to the adult being his /her
(state relationship)

AND

Delete (c) or (d) (c) I have no pecuniary interest in the order sought

(d) I have a pecuniary interest in the order sought

The nature and extent of that interest is

Signed¹²

Dated

¹² Please note that the application and accompanying reports will be served on interested parties.



SCOTTISH EXECUTIVE

Social Work Services Inspectorate

To: Chief Social Work Officers and
Heads of Training Sections for Social Work Departments

Copy to: Director, Mental Welfare Commission
Public Guardian

Angus Skinner
Chief Inspector
Victoria Quay
Edinburgh EH6 6QQ

Telephone: 0131-244 5414
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Angus.skinner@scotland.gsi.gov.uk
[Http://www.scotland.gov.uk](http://www.scotland.gov.uk)

Your ref:
Our ref:

7 January 2002

Dear Colleagues

1. **Transitional Arrangements Under The Adults with Incapacity (Scotland) Act 2000**
2. **Local Authority Training Material for The Adults with Incapacity (Scotland) Act 2000**
3. **Reviewing the Organisation of Mental Health Officer Services**

The implementation of Part 6 of The Adults With Incapacity (Scotland) Act 2000 (the 2000 Act) on 1 April 2002 will introduce significant new statutory duties on local authorities in relation to financial and welfare Intervention and Guardianship Orders. One million per annum has been allocated to local authorities to enable them to meet these new statutory demands. The purpose of this letter is to outline transitional arrangements which will apply in relation to Mental Health (Scotland) Act 1984 (the 1984 Act) Guardianship cases, to advise of the Scottish Executive's progress in developing training materials for use by local authorities in implementing local training strategies in respect of the 2000 Act, and to give notice of the SWSI's intention to undertake a survey of local authority MHO resources and models of deployment.

The **Transitional Arrangements Under The Adults With Incapacity (Scotland) Act 2000** detailed in Annex A outline relevant legal and organisational issues which will arise in the lead up to and introduction of Part 6 of the 2000 Act and give guidance on how they could be addressed. These should be read in conjunction with the Local Authority Code of Practice under the 2000 Act. The guidance on transitional arrangements focuses primarily on the renewal of 1984 Act Guardianship cases, new applications and renewals under the 2000 Act, and supervision of Guardians whose authority is transferred from the 1984 Act to the 2000 Act.

Annex B addresses the development of **Local Authority Training Material for the 2000 Act**. This material will be available in Spring 2002 and will complement the material already available to prepare local authority staff for the introduction of the 2000 Act, parts of which have been implemented already. The Local Authority Code of Practice under the 2000 Act has been available since March 2001 and this, as well as guidance issued by the Public Guardian's Office, and material from Scottish Executive seminars should have provided

local authorities with sufficient information to initiate the training essential to this task. This material is being designed to augment existing training material and programmes developed locally, and should be of considerable assistance to local authorities in implementing a comprehensive training strategy throughout their workforce on an ongoing basis.

Annex C discusses the emerging imperative that local authorities must begin **Reviewing the Organisation of Mental Health Officer Services** if they are to be in a position to respond to the increasing demands which will result from the implementation of Part 6 of the 2000 Act in April 2002, the new mental health legislation in 2004, and a number of related policy initiatives which are under way. It also announces SWSI's intention to undertake a survey of existing MHO structures and resources.

Comments and/or queries should be addressed to:

George Kappler
Social Work Services Inspectorate
3rd Floor East Rear
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

Yours sincerely

ANGUS SKINNER
Chief Inspector

Transitional Arrangements Under The Adults With Incapacity (Scotland) Act 2000

A. Renewal of 1984 Act Guardianship

1) All authorities should be aware of the arrangements for renewing 1984 Act Guardianship cases which are due to expire around the time the new arrangements for welfare Guardianship under Part 6 of the 2000 Act come into effect on 1 April 2002. Guardianship under Part 6 will supersede Guardianship under the Mental Health (Scotland) Act 1984 (the 1984 Act). Current Mental Health Act Guardianship cases which are due to expire in April or May 2002 which are not renewed in the two months prior to their expiry (i.e. in February and March 2002), as allowed in Section 47(3) of the 1984 Act, will have to be renewed by way of a fresh application under the 2000 Act when their original appointment under the 1984 Act expires after 1 April 2002. All 1984 Act Guardianship cases which expire after 31 May 2002, and which require to be renewed, **must** be renewed by way of a new application under the 2000 Act.

2) Under section 47(3) of the 1984 Act, Mental Health Act Guardianship can be renewed within the two month period before the Guardianship ends. The furnishing of the report to the local authority under this section renews the order, with the period for which it is renewed being either 6 months or 12 months from the expiry of the Guardianship. This means that it will be possible to renew 1984 Act Guardianship cases which expire during April and May of 2002 prior to the implementation of Part 6 of the 2000 Act. These procedures, however, including the formal receipt of the relevant forms by the local authority, will have to be completed by 31 March 2002. Completed renewal forms should be forwarded, as at present, to the Mental Welfare Commission. Best practice would be to seek renewal under the 2000 Act of as many as possible of the 1984 Act Guardianship cases which expire in the first two months after 1 April 2002. There will, however, be situations where this may not be practicable for a number of reasons, including the processing point made in the next paragraph. In such cases, renewal under the 1984 Act provisions will ensure the continuation of the protective powers of Guardianship. Even where renewal is to proceed via the 1984 Act route, consideration should be given to the principles of the 2000 Act in the decision making process.

B. Application Under the 2000 Act

3) All authorities should be aware of the arrangements for renewing 1984 Act Guardianship cases which are due to expire around the time the new arrangements come into force. All applications for Guardianship made on or after 1 April 2002, including renewal of 1984 Act Guardianship cases to be made on or after 1 April 2002, will have to comply with the 2000 Act and renewals in such circumstances will have to be made by way of a new application under that Act. The powers requested will have to be specified and in line with the principles outlined in Section 1 of the 2000 Act. The relevant forms will not be available, however, until 1 April and it would not in any case be competent to use them before the provisions in the 2000 Act enabling this process take effect. It also would not be competent to conduct the necessary interviews and examinations prior to 1 April 2002. The effect of this is that it will not be possible to have applications (and applications for renewals) for Guardianship under the 2000 Act prepared, considered and approved during the first few weeks of April 2002 because of the time required for this process.

4) All local authorities should be looking ahead, therefore, to determine when existing Guardianship cases are due to expire and set dates for the review and renewal process. It would also be prudent to assess all individuals for whom Guardianship powers might be necessary to ensure that action is taken in time so that they do not fall into that period in early April 2002 when it may not be possible to secure their care and protection under the 2000 Act. This may mean in certain cases that it would be preferable to prepare and submit applications for 1984 Act Guardianship cases in the latter part of March 2002 rather than waiting for the Part 6 provisions to take effect. All 1984 Act Guardianship applications lodged with the Sheriff Court prior to 1 April 2002 will be dealt with by the court in accordance with the 1984 Act, even though this process may take place after the commencement of the 2000 Act.

C. Supervision of Guardians by Local Authorities and Guardians' Responsibilities Under the 2000 Act

5) Local authorities should pay close attention to the new responsibilities which will fall to both local authorities and Guardians under the transitional arrangements. Given the statutory requirement to supervise Guardians under Section 10 (1) (a) of the 2000 Act, local authorities should make contact with all private Guardians whose authority is transferred under transitional arrangements to ensure that they are aware of their new duties and responsibilities under the 2000 Act. Guardians should be advised of the local authority's new duty to visit Guardians regularly (see below). The following Sections are among the more significant changes in the duties and responsibilities of Guardians which should be brought to their attention:

- a) Section 64 (4) (a) introduces a duty to notify the Public Guardian when the address of the Guardian changes.
- b) Section 64 (6) introduces the statutory authority for the Guardian to arrange for some or all of his functions to be exercised by one or more persons on his or her behalf.
- c) Section 67 (3) introduces the authority for the Guardian to exercise his or her powers when the adult is outwith Scotland.
- d) Section 68 (4) introduces the possibility of a Guardian being remunerated out of the adult's estate for costs associated in the exercise of his or her duties in cases where special cause is shown.
- e) Section 70 introduces new powers for the Guardian to apply to the sheriff to make an order in relation to an adult who is not complying with decisions of a Guardian related to the exercise of his or her powers.
- f) Section 74 introduces the possibility of applying to the sheriff for variations in the Guardianship order.

Local Authorities may find it helpful to refer Guardians to the Draft Code of Practice for Guardians and Interveners which is currently out for consultation (available at <http://www.scotland.gov.uk/justice/incapacity>) and to pass on copies of the final code when this is available at the end of March.

D. Visits to Guardians and Other Local Authority Responsibilities

6) Local authorities should also be aware of the new responsibilities to visit Guardians and the timescales for such visits where the Chief Social Work Officer is not the Guardian. These are currently outlined in the draft Regulations on the Supervision of Guardians by Local Authorities. (<http://www.scotland.gov.uk/justice/incapacity>). The draft Regulations relating to the supervision of Guardians refer in regulation 2 to the visiting requirements related to periods of appointment of the Guardian of a year or more, or less than a year. In the case of Mental Health Act Guardians, the date of appointment for the purpose of these regulations should be taken to be 1 April 2002, not the date of appointment under the Mental Health Act. Where the Chief Social Work Officer 's authority as Guardian is transferred under the transitional arrangements, local authorities should be mindful of the new duties and responsibilities associated with this. The following Sections are among the more significant changes:

- a) Section 64(4) see above.
- b) Section 64(6) see above.
- c) Section 67(3) see above.
- d) Section 70 see above.
- e) Section 71 introduces new arrangements for the removal of Guardians or recall of Guardianship by the sheriff.
- f) Section 73 introduces new arrangements for the recall of Guardians. Most notably , where Chief Social Work Officers are the Guardian, it will not be possible for the local authority to discharge the Guardianship themselves. They will have to apply to the Mental Welfare Commission, or, where the action is likely to be contested, the sheriff.
- g) Section 74 see above.
- h) Section 79 introduces the duty for the Chief Social Work Officer as Guardian to notify the Chief Social Work Officer of the receiving authority when the adult changes his place of habitual residence.

7) We will be in touch again with local authorities as soon as possible to inform them of the tutors dative in their areas who will become Guardians with welfare powers under the 2000 Act from 1 April.

Local Authority Training Material for the 2000 Act

Earlier this year a series of seminars organised on behalf of The Scottish Executive by ENABLE in Partnership with Alzheimer Scotland Action on Dementia were held throughout the country. On 16 July 2001 a report was issued containing a synopsis of the four seminars. The AWI website www.scotland.gov.uk/justice/incapacity contains a copy of this report. Following these seminars ADSW approached SWSI requesting more focused, in-depth training material directed at local authority staff. They felt such material was essential to help authorities respond to their new legislative responsibilities. In conjunction with ADSW a specification for the production of training materials was agreed and the contract was subsequently awarded to the Robert Gordon University to develop these materials under the guidance of an Advisory Group of members from ADSW, local authorities, NHS (Scotland) and The Scottish Executive. It is anticipated the material will be completed and distributed in early Spring 2002. A series of launching events introducing this material will be scheduled around the country.

The material will consist of a series of training packs targeted at staff working in different settings and in different roles within local authorities. This material will consist of the following training and information packs:

1. Briefing pack for Local Authority Elected Members;
2. Basic Information packs/Workbooks directed at Home Care Staff, Day Services, Social Work OT Assistants, Community Alarms Staff and Sheltered Housing Wardens
3. Information pack/Workbooks for Care Home Managers and Direct Care Staff of Care Homes;
4. Practitioners Information pack/Workbook directed at those involved in Assessment and Care Management;
5. Mental Health Officers Workbook/Guidance pack; and
6. Information pack for Senior Social Work Managers;
7. Trainers Guide to the Information pack for MHOs.

The training packs will be designed to be used in a variety of ways. They can be used formally in a group setting with a trainer who will guide staff through the material and the exercises; less formally in small groups; or even for study alone in the manner of distance learning. The material will be made available in hard copy to those responsible for local authority training. It will also be available in disc form and over the SWSI/NISW Research Weblink. The material on-line will make use of hyperlinks to directly connect the readers with existing Codes of Practice, Guidance and Regulations.

Reviewing the Deployment of MHO Services

In July 1998 the SWSI issued the results of a Mental Health Officer Survey. In analysing the data from the survey the SWSI noted the wide variations in the way in which local authorities organised and utilised available MHO resources and concluded that all authorities should continue to review the deployment of their MHOs in the light and legislative and policy developments. With the implementation of the Adults with Incapacity Act, the impending arrival of new mental health legislation and policy developments including the Joint Future Agenda, the Mental Health Framework, and Mentally Disordered Offenders, it is crucial that local authorities re-examine the structure and deployment of Mental Health Officer services.

Reviewing Mental Health Law intimated the Executive's intention to develop national standards for Mental Health Officer Services. This will focus the attention of local authorities on their current structures of services to examine whether they have the most appropriate model for delivering in accordance with established standards. To assist local authorities in this process the SWSI intends to commission in early 2002 a survey of existing models for delivery of Mental Health Officer Services. The analysis of the data from the survey will be made available to LAs prior to the start of the process of developing the national standards for Mental Health Officer Services.